2016 IL App (5th) 140222-U

NO. 5-14-0222

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

ELLEN M. O'NEILL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Williamson County.
	)	
v.	)	No. 13-L-164
	)	
JAMES B. EBERTS,	)	Honorable
	)	Brad K. Bleyer,
Defendant-Appellee.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: Mother's second complaint against Father was properly barred on the grounds of collateral estoppel.

¶ 2 Plaintiff, Ellen M. O'Neill (Mother), appeals the order entered by the circuit court of Williamson County dismissing her complaint based on the doctrine of collateral estoppel as well as the order denying her motion for reconsideration. We affirm.

¶ 3 Mother and Father, defendant James B. Eberts, were married in October of 1987. Two children were born to the marriage, one in 1990 and the other in 1991. Their marriage was subsequently dissolved in Florida, and the parties entered into a marital settlement agreement dated October 22, 1993.

¶ 4 Mother subsequently transferred the parties' dissolution of marriage case to Williamson County, Illinois, by filing a petition to establish and enroll judgment. The petition which was enrolled for enforcement purposes was granted in 2013 and assigned case number 2013-D-101. Mother then filed a motion for judgment alleging that, in accordance with the agreement, Father was obligated to pay $7,734 per month to her until each child turned 21. The motion for judgment further alleged that Father extended this agreement through 2014. As proof of the extension, Mother produced a letter, dated December 8, 2010, stating that Father will pay child support to Mother through the end of 2014 in the amount of $7,734 per month. An email, dated February 1, 2011, verified that Father's Morgan Stanley account was to automatically wire monies to Mother's account in that amount each month through 2014. Father, however, stopped paying any monies February 19, 2013, after making reduced payments for several months prior to that date.

¶ 5 In response to Mother's motion for judgment, Father filed a motion to dismiss contending that his obligation to make support payments had been completed. Under the agreement, Father's child support obligation terminated June 28, 2012. He also contended that any alleged modification to the parties' marital settlement agreement was not valid because such modification was not made in accordance with the formalities the agreement required. The agreement specifically provided: "A modification or waiver of any of the provisions of this Agreement shall be effective only if made in writing and executed with the same formality as this Agreement." Over the course of the years, the parties had modified the agreement seven times under the same formalities as the original

agreement. In other words, both parties had signed the modifications, with each of the signatures witnessed and notarized.

¶ 6 The trial court agreed with Father and granted his motion to dismiss. While the court did not approve of Father's actions, the court recognized that the parties had not formally modified Father's child support obligation as required by the agreement. The court further noted, relying on *In re Marriage of Michael*, 226 Ill. App. 3d 1088, 590 N.E.2d 998 (1992), that any informal modification was not binding on the court, and therefore was unenforceable.

¶ 7 Mother did not file a notice of appeal. Rather, she filed a new complaint, No. 2013-L-164, based on the alternative theories of breach of contract and promissory estoppel. In this complaint, Mother alleged that Father agreed to pay her $7,734 a month through 2014 and that Father stopped paying the monthly amount on February 19, 2013. She further alleged that the monies were to be used to maintain a home for the benefit of the parties' children through their graduation from college. The last child was expected to graduate December 2014.

¶ 8 Father filed a motion to dismiss based on the doctrines of *res judicata* and collateral estoppel. Father argued that the issue of his obligation to pay any further child support was already adjudicated in the first case. Mother argued that the issue of whether there was a separate contract and whether there was a breach of that contract was not addressed. The trial court granted Father's motion to dismiss, finding that Mother's complaint was barred by the doctrine of collateral estoppel. Mother's complaint was dismissed with prejudice, and her subsequent motion for reconsideration denied.

¶ 9 Mother argues on appeal that each complaint is distinct, even though based on the same set of operative facts. In the first case, the question was whether the parties had formally modified Father's child support obligation. In the second, the question was breach of contract, or promise. The first case dealt with child support, not whether there was a contract or promise in existence. The second case, seeking damages from a breach of contract or broken promise, was outside the realm of child support. While the monies may have been labeled as child support, the funds were actually used for other purposes, such as maintaining Mother's house. The standing instructions to the trust to pay Mother $7,734 monthly were sent as income verification for her to the bank holding her mortgage. Since the monies owed were not child support, and the final judgment in the first case applied only to modification of child support, Mother contends the court's ruling did not apply to the issues raised in the second case. She asserts that the second case involved a separate contract or agreement entered into between the parties outside the realm of the dissolution proceedings. While we are sympathetic to Mother's argument, we must disagree.

¶ 10 The doctrines of collateral estoppel and *res judicata* bar relitigation of an issue or claim that has already been adjudicated in a prior case. *Hurlbert v. Charles*, 238 Ill. 2d 248, 255, 938 N.E.2d 507, 512 (2010). Before collateral estoppel will bar a claim, three requirements must be met. The first is that the issue decided in the prior adjudication must be identical with the one present in the suit in question. The second, there must be a final judgment on the merits in the prior adjudication. And, third, the party against whom estoppel is being asserted was either a party, or in privity with a party, to the prior

adjudication. *Hurlbert*, 238 Ill. 2d at 255, 938 N.E.2d at 512. For *res judicata* to bar a claim, again three requirements must be met. First, there must be an identity of the parties or their privies; second, there must be an identity of the causes of action; and third, there must be a final judgment on the merits rendered by a court of competent jurisdiction. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883, 889 (1998); *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 294, 602 N.E.2d 820, 824-25 (1992). Additionally, *res judicata* bars not only the issues that were actually raised in the prior proceeding, but also any issues which could have been raised in the prior proceeding. *River Park*, 184 Ill. 2d at 302, 703 N.E.2d at 889. "The purpose of *res judicata* is to promote judicial economy by requiring parties to litigate, in one case, all rights arising out of the same set of operative facts and also [to] prevent[ ] the unjust burden that would result if a party could be forced to relitigate what is essentially the same case." (Internal quotation marks omitted.) *River Park*, 184 Ill. 2d at 319, 703 N.E.2d at 896. As our supreme court explained in *People ex rel. Burris*, "[w]hile one group of facts may give rise to a number of different theories of recovery, there remains only a single cause of action. 'If the same facts are essential to the maintenance of both proceedings or the same evidence is needed to sustain both, then there is identity between the allegedly different causes of action asserted and *res judicata* bars the latter action.' " *People ex rel. Burris*, 151 Ill. 2d at 295, 620 N.E.2d at 825 (quoting *Morris v. Union Oil Co. of California*, 96 Ill. App. 3d 148, 157, 421 N.E.2d 278, 285 (1981)).

¶ 11 The issue before us is whether the identity of the causes of action are the same in the two cases Mother brought against Father. Everyone agrees that both cases involve the same parties and the same set of operative facts, and that there was a final judgment on the merits in the first case. We agree with the court and Father that both cases also involve the same claim and demand, and therefore, Mother is collaterally estopped from pursuing other claims against Father pertaining to the alleged agreement extending monthly support payments. The issues raised in both cases relate to Father's payment obligations encompassing child support and expenses for the benefit of the parties' children over and above child support. The pleadings use the same terminology, irrespective of what the monthly payment is called. Mother should have brought her contract and promissory estoppel claims in the first case she filed as alternative theories. Mother appears to have already recognized these possible causes of action when stating in email communications from her attorney during the first case that "the agreement is evidenced by the fact that payments were in fact made for a substantial amount of time until you breached the agreement by shorting the payment" in July of 2012. Similarly, Mother argued in her motion to reconsider that "the mere fact that [Father] may make an agreement, follow said agreement for over a year and unilaterally breach the agreement is patently unjust." The trial court fully considered the issue of Father's alleged agreement to pay Mother $7,734 per month through 2014, and concluded collateral estoppel was applicable in this instance. We find that the principles of both doctrines, collateral estoppel and *res judicata,* are equally satisfied here. Consequently, the issue as to

whether Father owed Mother monthly payments of $7,734 through 2014 under any other possible theory is barred.

¶ 12 Father also filed a motion to strike additional pleadings, as well as a hearing transcript, filed as part of the common law record from the first case, which occurred after the trial court denied Mother's motion to reconsider and motion for new hearing. Given our disposition, we need not address that motion.

¶ 13 For the aforementioned reasons, we affirm the judgment of the circuit court of Williamson County dismissing Mother's claim on the basis of collateral estoppel.

¶ 14 Affirmed.