2012 IL App (4th) 120083-U

NO. 4-12-0083

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
November 2, 2012
Carla Bender
4th District Appellate
Court, IL

ALBERTA A. BILLINGSLEY and DENNIS BILLINGSLEY, Plaintiffs-Appellants, v. RONALD F. PETERS, as Trustee of the Ronald F. Peters Living Trust; and LINDA PETERS, as Trustee of the Linda Peters Trust, Defendants-Appellees.	)	Appeal from Circuit Court of Schuyler County No. 11CH2 Honorable Thomas J. Brannan, Judge Presiding

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding that the doctrine of *res judicata* barred plaintiffs' claim because it arose out of the same group of operative facts as previous litigation between the parties.

¶ 2 Following a July 2003 bench trial, the trial court found that plaintiffs, Alberta A. Billingsley and Dennis Billingsley, possessed an estate servient to a 40-acre estate owned by defendants, Ronald F. Peters and Linda Peters. The court thereafter enjoined the Billingsleys from impeding the natural flow of water from the Peters' property and ordered the Billingsleys to lower a pond that they had previously constructed.

¶ 3 In March 2011, the Billingsleys filed a complaint, alleging that 7.5 acres of the Peters' land did not naturally drain across the Billingsleys' land. The Peters filed a motion to dismiss, asserting that *res judicata* barred the Billingsleys' claim. Following a January 2012

hearing, the trial court granted the Peters' motion.

¶ 4 The Billingsleys appeal, arguing that the trial court erred by dismissing their complaint because the facts alleged in their complaint "came into existence" following the resolution of the first case. Further, the Billingsleys assert that applying the doctrine of *res judicata* to this case would result in inequitable and unjust results. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 The Billingsleys and the Peters own adjacent tracts of land in Schuyler County, Illinois. In 2000, the Billingsleys, whose property lies to the west of the Peters', constructed a dam and retaining pond on their land that caused water to back up onto the Peters' property, ultimately leading to a protracted legal battle between the parties.

¶ 7 A. Schuyler County Case No. 02-CH-10

¶ 8 In February 2003, the Peters filed an amended complaint for injunctive relief, asserting that surface water naturally flowed from their property onto the Billingsleys' property, but that the Billingsleys had willfully and intentionally constructed a dam or levee on their land that obstructed natural drainage, causing water to back up onto the Peters' property and submerge the Peters' drain tile outlet. The Peters also asserted that the Billingsleys' actions violated section 2-12 of the Illinois Drainage Code (70 ILCS 605/2-12 (West 2002)).

¶ 9 In March 2003, the Billingsleys filed an answer, admitting that water naturally flowed onto their property from the Peters' but denying that their dam obstructed this flow.

¶ 10 Following a July 2003 bench trial, at which the Billingsleys introduced a 37-page lake study conducted by an engineering firm, Judge Carol Pope entered an August 2003 written order enjoining the Billingsleys from impeding the natural flow of water from the Peters' land.

Judge Pope noted that water naturally drained from the Peters' property, the dominant estate, in a northwest direction across the Billingsleys' property, the servient estate.

¶ 11 A year before the Billingsleys constructed their dam, the Peters had installed a tile system along the western boundary of their property, placing the tile outlet in an open ditch at the northwest corner of their estate. Generally, during heavy rains, water collected in the Peters' ditch but evaporated shortly after the rain stopped. After the Billingsleys constructed their dam, however, water began accumulating in the ditch, causing the Peters' tile line and tile outlet to become submerged under approximately three feet of water. Judge Pope's August 2003 order also mandated that the Billingsleys reduce the water level in their retention pond so that the flow of water through the Peter's ditch would be the same as it had been prior to the pond's installation.

¶ 12 In December 2003, the Peters filed a petition for rule to show cause in No. 02-CH-10, alleging that the Billingsleys had failed to comply with the trial court's August 2003 order to reduce their retention pond. Judge Pope found that although the Billingsleys were not in contempt, they had to lower the level of their pond by March 30, 2004.

¶ 13 In May 2004, the Peters filed a second petition for rule to show cause, again alleging that the Billingsleys failed to reduce their retention pond. At a July 2004 hearing, the parties disputed the appropriate level of the Billingsleys' pond. Thereafter, Judge Pope spoke to the parties' lawyers in chambers. A docket entry from that hearing states as follows: "formal Orders to follow." The record in No. 02-CH-10, however, does not show that a final written order was entered.

¶ 14 In June 2010, the Billingsleys filed a petition for entry of final order and other

relief, alleging that the trial court's July 2004 decision meant that they should be given "sufficient time to lower [their] pond" because "water was draining into the waterway much faster than if natural drainage had been left in tact [*sic*]." Further, the petition requested that the court order the Peters to disconnect their tile system on this 7.5-acre tract of land because "it [had] now been brought to" the Billingsleys' attention that the Peters' tile system had diverted the natural drainage of the southern 7.5 acres of the Peters' land.

¶ 15 In January 2011, the Peters filed a motion to dismiss pursuant to section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2010)). The Peters claimed that the Billingsleys' June 2010 petition asked the trial court to "reopen the evidence, admit further evidence ***, and to reopen the proofs," and was thus untimely. In February 2012, the Peters filed a third petition for rule to show cause in No. 02-CH-10, again alleging that the Billingsleys failed to comply with the court's previous orders to reduce their pond.

¶ 16 In March 2011, Judge Thomas J. Brannan dismissed the Billingsleys' petition. The Billingsleys did not appeal.

¶ 17 B. Case No. 11-CH-2

¶ 18 Following the trial court's dismissal of their petition in No. 02-CH-10, the Billingsleys initiated a new proceeding by filing a complaint for injunctive relief. The complaint alleged that the Peters' tile system had altered the natural drainage of a southern 7.5-acre tract of their land, causing the water from that 7.5-acre tract to flow onto the Billingsleys' property.

¶ 19 In April 2011, the Peters filed a motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619(a)(4) (West 2010)), asserting that the doctrine of *res judicata* barred the Billingsleys' claim. The Billingsleys responded, alleging that *res judicata* did not apply because

the Billingsleys did not learn that the southern portion of the Peters' property naturally drained in a different direction until 2010. In support of their response, the Billingsleys attached a May 2010 memorandum from an engineering firm, opining that approximately 7.5 acres of the Peters' land should naturally drain to the south.

¶ 20 Following a January 2012 hearing, the trial court granted the Peters' motion to dismiss, finding that *res judicata* barred the Billingsleys' claim. Specifically, the court noted that Judge Pope's August 2003 order found the Peters' tile system was "responsible for draining all of the [Peters'] land." Thus, the court reasoned that, if the Billingsleys had wanted to address the drainage issue raised in their March 2011 complaint, they could have done so in No. 02-CH-10.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, the Billingsleys argue that the trial court erred by dismissing their complaint because the facts alleged in their complaint "came into existence" following the resolution of the first case. Further, the Billingsleys assert that applying the doctrine of *res judicata* to this case would result in inequitable and unjust results. We disagree.

¶ 24 A motion to dismiss pursuant to section 2-619 of the Code admits the legal sufficiency of a complaint but asserts that an affirmative matter bars the claim. *Jane Doe-3 v. McLean County Unit District No. 5 Bd. Of Directors*, 2012 IL 112479, ¶ 15, 973 N.E.2d 880, 887. We review a trial court's dismissal pursuant to section 2-619 *de novo*. *Id.*

¶ 25 Here, the trial court granted the Peters' section 2-619 motion after finding that the Billingsleys' claim was barred by the doctrine of *res judicata*. The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars

subsequent actions between the same parties on the same claim, demand, or cause of action. *Arvia v. Madigan*, 209 Ill. 2d 520, 533, 809 N.E.2d 88, 97 (2004). This bar extends to matters that were actually decided in the first action as well as matters that could have been decided. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 213 (2008). For *res judicata* to apply, three requirements must be satisfied: (1) a final judgment on the merits has been rendered, (2) an identity of cause of action exists, and (3) the parties or their privies are identical in both actions. *Id.*

¶ 26 The Billingsleys do not dispute that the first and third requirements have been satisfied. They contend, however, that the second requirement—an identity of cause of action—is not satisfied because the facts alleged in their complaint did not "come into existence" until 2010. Specifically, they claim that they did not learn that the Peters had rerouted the natural course of drainage on the southern 7.5 acres of their property until the engineering firm submitted an updated lake study seven years after the trial court's judgment in No. 02-CH-10.

¶ 27 In determining whether an identity of cause of action exists, Illinois courts apply the transactional test, under which "separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief." *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311, 703 N.E.2d 883, 893 (1998).

¶ 28 We conclude that the Billingsleys' claim in No. 11-CH-2 is the same cause of action for purposes of *res judicata* because it arises from the same group of operative facts as No. 02-CH-10. The Peters' amended complaint specifically alleged that water naturally drained from their property onto the Billingsleys' property. The Billingsleys' answer admitted those

allegations, and the trial court later found it was "undisputed" that the Billingsleys' estate was servient to the Peters'. Now the Billingsleys assert that the Peters' southern 7.5-acre tract of land does not naturally drain onto the Billingsleys' property, an issue that the court resolved in No. 02-CH-10.

¶ 29 Nonetheless, the Billingsleys assert that *res judicata* does not bar their claim because the facts in No. 11-CH-2 did not "exist" at the time of judgment in No. 02-CH-10. We disagree.

¶ 30 The facts in No. 11-CH-2 *did* exist in May 2004; the Billingsleys just did not become aware of them until they received the May 2010 engineering study. Nothing, however, precluded the Billingsleys from discovering those facts sooner. Whether the Billingsleys owned the servient estate was an element of the Peters' cause of action in No. 02-CH-10. As the Peters point out, before filing their answer admitting that they possessed the servient estate, the Billingsleys could have investigated the topography of the parties' respective properties and litigated the issue. For whatever reason, they elected not to do so. Permitting them to proceed on that basis now would amount to a second bite at the apple. See *Arvia*, 209 Ill. 2d at 534, 809 N.E.2d at 98 ("[*R*]*es judicata* prevents a party from taking two bites out of the same apple.").

¶ 31 As a corollary issue, the Billingsleys contend that applying *res judicata* in this case would be fundamentally unfair and unjust because (1) they will be subject to possible contempt if their pond continues to cause water to back up over the Peters' tile outlet, and (2) the only way they can bar the Peters from obtaining drainage rights by prescription is by moving forward with this litigation. We disagree.

¶ 32 The Billingsleys are correct in their assertion that courts should refrain from

applying *res judicata* where doing so would be fundamentally unfair. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390, 757 N.E.2d 471, 477 (2001). We conclude, however, that applying *res judicata* here is not unfair. That the Billingsleys may be subject to possible contempt proceedings if the Peters' outlet becomes submerged is merely an outcome of the court's decision in No. 02-CH-10. Although the Billingsleys may be dissatisfied with that outcome, this court has long held that a party cannot relitigate an issue "merely because they are unhappy with the previous result." *Edwards v. City of Quincy*, 124 Ill. App. 3d 1004, 1014, 464 N.E.2d 1125, 1132 (1984).

¶ 33 With respect to the Billingsleys' second argument, we note that the Peters have already obtained the right to drain water onto the Billingsleys' property by virtue of the trial court's judgment in No. 02-CH-10. Thus, a "risk" that the Peters may obtain prescriptive drainage rights does not actually exist because the Peters have already obtained those rights. Accordingly, we decline to relax the application of *res judicata* because, for the reasons stated, the fundamental fairness exception does not apply.

¶ 34 III. CONCLUSION

¶ 35 For the reasons stated, we affirm the trial court's judgment.

¶ 36 Affirmed.