

Commonwealth of Kentucky
Court of Appeals

NO. 2005-CA-002464-MR

JIMMY E. SHELTON

APPELLANT

v. APPEAL FROM UNION CIRCUIT COURT
HONORABLE TIMOTHY C. STARK, JUDGE
ACTION NO. 05-CI-00063

KEVIN PARRISH, ADMINISTRATOR OF
VERLON E. SHELTON ESTATE

APPELLEE

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Jimmy E. Shelton brings this appeal from an October 31, 2005, order of the Union Circuit Court dismissing his action as barred by *res judicata*. We affirm.

The procedural history underlying this case is convoluted and began in 1967. In that year, Jimmy filed a petition for dissolution of marriage in Henderson

¹ Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Circuit Court (Action No. 6645). He was then married to Rose Marie Shelton. In his petition, Jimmy specifically stated that Rose “is expecting a child to be born on or about June 8, 1967. Said child is not fathered by plaintiff herein and the pregnancy is not a result of the marriage.” On May 24, 1967, Rose gave birth to Verlon E. Shelton. A few weeks later, on June 9, 1967, Jimmy was deposed. In that deposition, the following exchange took place between Jimmy and counsel:

48. Is it your opinion that her child is the result of her relationship with Chuckie Gee?

A. Yes sir.

In an Interlocutory Decree of Divorce, the circuit court dissolved Jimmy and Rose's marriage and specifically concluded “that the plaintiff and defendant have no children born as a result of this marriage.” This interlocutory decree was subsequently incorporated into a Final Judgment of Divorce.

On October 28, 2003, Verlon was killed in a motor vehicle accident in Union County, Kentucky. A motor vehicle crossed the center line on a two-lane highway and collided head-on into the vehicle Verlon was driving. At the time of his death, Verlon was thirty-six years of age, unmarried, and had no issue.

In Union District Court, Probate Division, Action No. 03-P-00168, Kevin L. Parrish was appointed Administrator of Verlon's estate. The Administrator subsequently pursued and settled the Estate's wrongful death claim against the driver of the motor vehicle that collided with Verlon's vehicle.² In District Court Action No. 03-P-

² It appears that the wrongful death action was settled for \$270,000.00.

000168, the Administrator filed a petition for leave to distribute proceeds from the wrongful death action. In that petition, the Administrator claimed that Jimmy was not the biological father of Verlon and requested leave to distribute the entire settlement proceeds to Rose, Verlon's biological mother. In response, Jimmy filed a motion titled "Opposition to Motion for Leave to Distribute Proceeds From Wrongful Death Recovery." Jimmy claimed to be the biological father of Verlon and entitled to receive a portion of the settlement proceeds under Kentucky Revised Statutes (KRS) 411.130.

By order entered October 1, 2004, the district court determined that Jimmy was not entitled to any portion of the settlement proceeds and relied in part upon KRS 411.137.³ The district court reasoned:

The proof in the case at bar shows there is no father eligible to share in the proceeds recovered for [Verlon's] wrongful death. If Jimmy believed [Verlon] to be his child he could have sought to establish a relationship with him and accept his parental responsibility. There is no evidence that he made any attempt regarding either until after his death.

³ KRS 411.137 provides in part:

- (1) A parent who has willfully abandoned the care and maintenance of his or her child shall not have a right to maintain a wrongful death action for that child and shall not have a right otherwise to recover for the wrongful death of that child, unless:
 - (a) The abandoning parent had resumed the care and maintenance a t least one (1) year prior to the death of the child and had continued the care and maintenance until the child's death; or
 - (b) The parent had been deprived of the custody of his or her child under an order of a court of competent jurisdiction and the parent had substantially complied with all orders of the court requiring contribution to the support of the child.

In a separate order also entered on October 1, 2004, the district court directed the Administrator to distribute the proceeds from the settlement to Rose. Jimmy filed an appeal (Action No. 04-XX-00006) in the Union Circuit Court.

On April 28, 2005, the Union Circuit Court affirmed the district court's October 1, 2004, orders. In its opinion affirming, the circuit court initially stated that it was faced with the question of whether the district court possessed subject matter jurisdiction to determine whether Jimmy should share in the settlement proceeds. The circuit court concluded that the district court was properly vested with jurisdiction and reasoned:

[U]nless jurisdiction is vested solely in the Circuit Court, as in the construction matter in *Vega*, any proceedings conducted in District Court, regardless of whether they are actually conducted in an adversarial manner, are, by definition, non-adversarial. If either of the parties elect to continue to fight in Circuit Court, then the District Court is precluded from acting. Therefore, in this case since the matter was resolved by a decision of the District Court, without recourse to Circuit Court, the District Court had jurisdiction. It appears that the District Court can approve or disapprove a proposed distribution by personal representative. In this action, that would bring into issue whether or not the Appellant was the father for purposes of the wrongful death statute. Consequently the District Court would have jurisdiction to determine that he was not, and therefore that the distribution excluding him would be proper.

The circuit court also determined that the district court correctly concluded Jimmy was not entitled to share in the settlement proceeds and affirmed the district court's distribution of said proceeds to Rose. Discretionary review of the circuit court's April 28, 2005, order was denied by the Court of Appeals on August 15, 2005.

Before the appeal in Action No. 04-XX-00006 to the circuit court was affirmed, Jimmy initiated this action (Action No. 05-CI-00063) against the Administrator of Verlon's Estate in the Union Circuit Court on March 15, 2005. In his complaint, Jimmy claimed to be the biological father of Verlon and entitled to share in the proceeds from the wrongful death action. The Administrator filed an answer denying Jimmy's allegations. On October 5, 2005, the Administrator filed a Motion To Dismiss and claimed that the action was barred by *res judicata*. The Administrator argued that the issue of proper distribution of the settlement proceeds had been previously decided by the district court in Action No. 03-P-00168 and later affirmed on appeal by the circuit court in Action No. 04-XX-00006. Moreover, the issue of the district court's jurisdiction was also decided by the circuit court on appeal in Action No. 04-XX-00006. As such, Jimmy was barred from pursuing the action by the doctrine of *res judicata*. By order entered October 31, 2005, the circuit court dismissed the action as barred by *res judicata*. This appeal follows.

Jimmy contends that the circuit court erroneously dismissed his action based upon *res judicata*. Jimmy argues that the district court lacked subject matter jurisdiction in Action No. 03-P-00168 to determine whether he was Verlon's father and, thus, to distribute the proceeds from the wrongful death settlement. Specifically, Jimmy maintains:

1. The matter then before the court was not a probate matter;

2. The matter then before the court was an adversarial dispute which was required to be brought before the circuit court.

Jimmy's Brief at 4. Jimmy also maintains that the district court's October 1, 2004, orders are not entitled to the preclusive effect of *res judicata*, as the district court lacked subject matter jurisdiction. We disagree.

The doctrine of *res judicata* has two components: (1) claim preclusion and (2) issue preclusion. Resolution of this appeal centers upon the doctrine of issue preclusion. In *Yoeman v. Commonwealth*, 983 S.W.2d 459, 465 (Ky. 1998), the Court concluded that issue preclusion would bar relitigation of an issue if the following elements were present:

For issue preclusion to operate as a bar to further litigation, certain elements must be found to be present. First, the issue in the second case must be the same as the issue in the first case. Restatement (Second) of Judgments § 27 (1982). Second, the issue must have been actually litigated *Id.* Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. *Id.* Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment. *Id.*

Also, it is axiomatic that a court must be properly vested with subject matter jurisdiction before *res judicata* will attach to its judgment.

In the case *sub judice*, Jimmy claims that the district court lacked subject matter jurisdiction in Action No. 03-P-00168; thus, its October 12, 2004, orders are not entitled to the preclusive effect of *res judicata*. However, it is undisputed that the issue

of the district court's subject matter jurisdiction in Action No. 03-P-00168 was squarely placed before and previously decided by the circuit court in Action No. 04-XX-00006. In fact, it is clear that the jurisdictional issue before the circuit court in Action No. 04-XX-00006 is identical to the jurisdictional issue raised in this case. In Action No. 04-XX-00006, the record reveals that Jimmy argued that the district court's October 1, 2004, orders were void because the district court lacked subject matter jurisdiction. In its opinion affirming, the circuit court concluded that the district court possessed subject matter jurisdiction over the controversy. Considering the elements outlined in *Yoeman*, we hold that the doctrine of issue preclusion bars relitigation of the issue of the district court's subject matter jurisdiction in Action No. 03-P-00168. *See Yoeman*, 983 S.W.2d 459. In short, Jimmy is bound by the October 1, 2004, final orders of the district court.

Jimmy also argues that Judge Timothy Stark should have recused as circuit court judge in the instant action (Action No. 05-CI-00063). Judge Stark was appointed as special judge to preside over this action in circuit court. The record indicates that Judge Stark was also the presiding judge in Jimmy's appeal (Action No. 04-XX-00006) to the circuit court. Jimmy believes that Judge Stark was required to recuse under KRS 26A.015(2)(a). In his brief, Jimmy specifically states:

Judge Stark had personal knowledge of the disputed facts from his sitting as special judge on the appeal of the district court case number 03-P-00168, and had rendered an opinion that those facts, though summarily decided, were correct and that the district court had jurisdiction to decide the matter before it.

Jimmy's Brief at 9.

KRS 26A.015(2)(a) provides:

- (2) Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:
 - (a) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding[.]

In this appeal, Jimmy has failed to identify the alleged “disputed facts” and failed to cite this Court to the record or to any evidence supporting the existence of such disputed facts. Jimmy simply argues that Judge Stark should recuse because he presided over the appeal (Action No. 04-XX-00006) to the circuit court and also presided over the instant action in circuit court. We do not read KRS 26A.015(2)(a) as mandating recusal for such reason. Consequently, we reject this argument as being without merit.

For the foregoing reasons, the Order of the Union Circuit Court is affirmed.

ALL CONCUR.

BRIEFS AND ORAL ARGUMENT FOR
APPELLANT:

Joel C. Rich
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BRIEF AND ORAL ARGUMENT FOR
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