

**INTERDICTION OF IRMA D.
HUNTER**

*

NO. 2018-CA-0685

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COURT OF APPEAL

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FOURTH CIRCUIT

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STATE OF LOUISIANA

APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2017-08540, DIVISION "B-1"

Honorable Rachael Johnson,

Judge Roland L. Belsome

(Court composed of Judge Roland L. Belsome, Judge Sandra Cabrina Jenkins,
Judge Paula A. Brown)

JENKINS, J., CONCURS IN THE RESULT

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**REVERSED AND REMANDED
DECEMBER 19, 2018**

In this interdiction proceeding, the Plaintiff, Dhana Hunter, appeals the trial court's judgment sustaining the exceptions of insufficiency of service of process, no cause of action, no right of action, and res judicata, filed by the Defendant, Irma Hunter. For the following reasons, the trial court's ruling is reversed and the matter is remanded for further proceedings.

FACTS AND PROCEDURAL HISTORY

On January 17, 2017, Audria Hunter, filed a petition for interdiction, seeking the full interdiction of his wife, Irma Hunter.¹ Ms. Hunter (Defendant) filed exceptions of no right of action, no cause of action, and vagueness. On July 6, 2017, there was a hearing on the exceptions; however, the trial court did not allow counsel for Mr. Hunter to oppose the exception due to her failure to file an opposition brief. After the hearing, the trial court dismissed the case with prejudice.²

Approximately two months later, the Defendant's daughter, Dhana Hunter (Plaintiff), filed the instant petition for interdiction, also seeking the full

¹ The petition for interdiction, case number 2017-540, was filed in Civil District Court, and allotted to Judge Sidney Cates, IV in Division "C".

² Prior to Judge Cates' ruling on the exceptions, Judge Bernadette D'Souza dismissed a petition for a protective order filed by the Defendant against her son and power of attorney, Desmond Hunter. Judge D'Souza dismissed the petition due to the Defendant's incompetency to testify.

interdiction of her mother.³ In response, the Defendant filed exceptions of insufficiency of service of process, no cause of action, no right of action, and res judicata. After a hearing on March 9, 2018, the trial court granted the Defendant's exceptions and dismissed the case with prejudice.⁴ This appeal followed.

DISCUSSION

On appeal, the Plaintiff asserts that the trial court erred in granting the exceptions of insufficiency of service of process, no cause of action, no right of action, and res judicata. We agree. We organize and discuss the Plaintiff's assignments of error in the following order: 1) res judicata, 2) insufficiency of service of process, no cause of action and no right of action.

RES JUDICATA

First, as to the res judicata exception, the only issue before the court is whether the trial court erred in finding that res judicata barred the second interdiction suit. The standard of review of a peremptory exception of res judicata requires an appellate court to determine if the trial court's decision is legally correct. *Myers v. Nat'l Union Fire Ins. Co. of Louisiana*, 09-1517, p. 5 (La. App. 4 Cir. 5/19/10), 43 So.3d 207, 210 (citation omitted). Louisiana courts recognize that "a final judgment has the authority of res judicata only as to those issues presented in the pleading and conclusively adjudicated by the court." *Id.* Moreover, the doctrine of res judicata is *stricti juris* and, accordingly, any doubt concerning the applicability of the principle must be resolved against its application. *Id.*

³ The second petition for interdiction, case number 2017-8540, was filed in Civil District Court, and allotted to Judge Rachael Johnson in Division "B".

⁴ During the hearing, counsel for the parties conveyed that Mr. and Mrs. Hunter were also involved in litigation in two other sections of Civil District Court involving a trust suit and a divorce suit.

The doctrine of res judicata precludes re-litigation of claims and issues arising out of the same factual circumstances when there is a valid final judgment. *See Avenue Plaza, L.L.C. v. Falgoust*, 96-0173, pp. 4-5 (La. 7/2/96), 676 So.2d 1077, 1079. Louisiana's res judicata statute is La. R.S. 13:4231, which provides:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

- (1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.
- (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
- (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to **any issue actually litigated and determined** if its determination was essential to that judgment. (emphasis supplied).

Res judicata cannot be invoked unless all its essential elements are present and each necessary element has been established beyond all question. *Louisiana Workers' Comp. Corp. v. Betz*, 00-0603, p. 3 (La. App. 4 Cir. 4/18/01), 792 So.2d 763, 765. The Louisiana doctrine of res judicata was amended by Act 521 of 1990 by adopting issue preclusion. *See Ensenat v. Edgcombe*, 97-2239, p. 3 (La. App. 4 Cir. 3/11/98), 707 So.2d 1059, 1061. The Louisiana Supreme Court has stated that “the chief inquiry is whether the second action asserts a cause of action which arises out of the same transaction or occurrence that was the subject matter of the first action.” *Burguières v. Pollingue*, 02-1385, p. 7 (La. 2/25/03), 843 So.2d 1049, 1053. However, all of the following must be fulfilled to preclude a second action under res judicata:

(1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.

Id., 02-1385, p. 8, 843 So.2d at 1053. In deciding the applicability of res judicata, we must first look to the former petition for interdiction to determine what was adjudged by a final judgment. The court must determine what matters were actually litigated and decided. *Veterans Elec., Inc. v. Dragon Ltd., Inc.*, 94-207 (La. App. 5 Cir. 10/12/94), 645 So.2d 755, 757.

In the instant case, the judgment on the first petition granted the Defendant's exceptions of no right of action, no cause of action and vagueness. The merits of the interdiction, particularly concerning the Defendant's ability to make reasoned decisions, were not litigated. Accordingly, since these issues were never litigated and decided, the exception of res judicata was improperly sustained.

INSUFFICIENCY OF SERVICE OF PROCESS / NO CAUSE OF ACTION / NO RIGHT OF ACTION

Next, although the Defendant raises the exceptions of insufficiency of service, no cause of action and no right of action separately, the basis raised in support of these exceptions stem from the underlying argument concerning the insufficiency of service. As such, success on the exceptions of no cause of action and no right of action is contingent upon the success of the exception of insufficiency of service of process. Therefore, we address these exceptions collectively on the exception of insufficiency of service.

In an interdiction proceeding, personal service of the citation and petition is required. La. C.C.P. art. 4543. In the instant case, the Plaintiff's domiciliary

service of the citation and petition upon the Defendant's son, Damion Hunter, was insufficient service upon the Defendant. Therefore, the trial court correctly sustained the declinatory exception. However, this finding does not dictate dismissal. *West v. Melancon*, 02-1335, p. 3 (La. App. 4 Cir. 3/19/03), 843 So.2d 485, 487. "Dismissal is a 'drastic remedy' reserved for extreme circumstances in which all procedural safeguards have been followed." *Id.*, 02-1335, pp. 3-4, 843 So.2d at 487.

A procedural safeguard provided by the Code for this context is set forth in La. C.C.P. art. 932, which provides: "[w]hen the grounds of the objections pleaded in the declinatory exception may be removed by amendment of the petition or other action of plaintiff, the judgment sustaining the exception **shall** order the plaintiff to remove them within the delay allowed by the court." La. C.C.P. art. 932 (emphasis supplied). "When the grounds for the exception is insufficiency of service of process, 'the plaintiff usually can cure the defect by having a new citation issued and served.'" *West*, 02-1335, p. 4, 843 So.2d at 487-88 (quoting 1 Frank L. Mariast and Harry T. Lemmon, *Louisiana Civil Law Treatise: Civil Procedure* § 8.2 (1999)).

Since the improper service of the petition can be cured by the Plaintiff requesting and obtaining personal service of process on the Defendant, the trial court erred in failing to allow her an opportunity to do so, as required by La. C.C.P. art. 932. Accordingly, we reverse and remand the matter to allow the Plaintiff an opportunity to cure the defect in the service of process.

CONCLUSION

For the foregoing reasons, we reverse the trial court's judgment and remand the matter to the trial court for further proceedings consistent with this opinion.

REVERSED AND REMANDED