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ARKANSAS COURT OF APPEALS

DIVISION III
No. CA11-966

JACKIE PRICE, SR. APPELLANT V. BARBARA GRIFFIN APPELLEE	**Opinion Delivered** March 14, 2012 APPEAL FROM THE JACKSON COUNTY CIRCUIT COURT [NO. DR-2000-208] HONORABLE ROBERT GARRETT, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Jackie Price, Sr., appeals from an order of the Jackson County Circuit Court dismissing by summary judgment his May 7, 2010 motion to enforce a provision in the parties' supplemental divorce decree, which was filed on November 26, 2002. The trial court found that Price's action was barred by res judicata because he did not appeal the dismissal by summary judgment of a similar cause of action in 2009. The trial court also found that if the 2009 complaint had not been filed, "Rule 60 [of the Arkansas Rules of Civil Procedure] would apply to this case." On appeal, Price argues that the trial court erred by dismissing his motion pursuant to the doctrine of res judicata because his present claim sounded in equity as opposed to his previous effort to obtain relief, which sounded at law; his claim was controlled by laches, not a statute of limitations; public policy does not allow a party to raise a statute-of-limitations defense where the party has violated a court order; and the earlier order did not have preclusive effect on his current action. He also argues that the trial court

erred in dismissing the 2010 motion "for its alternative ground of Rule 60." We affirm.

There are no disputed facts. The above-referenced supplemental decree awarded appellee Barbara Griffin one-half of "all increases in [Price's] pension/retirement plan from the date of marriage, June 15, 1997, through the rendering of the divorce herein, on August 20, 2002." The parties filed a document captioned "STIPULATED QUALIFIED DOMESTIC RELATIONS ORDER," hereinafter, "the QDRO." The QDRO recited that Griffin was entitled to "the actuarial equivalent of 50% of the Plan Participant's benefit accrued as of August 20, 2002." It allowed Griffin to collect that share upon the earlier of when Price reached retirement age or terminated his employment. Price, Price's lawyer, and Griffin signed the QDRO, as did the trial judge.

On May 30, 2009, a check was cut by Price's retirement plan, giving Griffin the share of Price's retirement that was specified in the QDRO: $48,475.81. Price filed a complaint alleging that Griffin "received money that in equity and good conscience, she ought not to retain and has been unjustly enriched by receipt of the money that she knew she was not entitled." Somehow, the trial court found that Price's cause of action was based on facts that "sound[ed] in contract" and granted summary judgment in favor of Griffin in an order dated December 17, 2009.

Price did not appeal from the 2009 order. Instead, on May 7, 2010, Price filed the motion to enforce the supplemental decree that is the subject of this appeal. In it, he again alleged that Griffin received more money from his retirement account than the supplemental

decree awarded. He asserted that the QDRO contained a clerical error that made the award possible and that under Arkansas Rule of Civil Procedure 60(b), the trial court had the authority to correct clerical mistakes. Price prayed that the trial court correct the error and compel Griffin to disgorge the overpayment. Griffin again successfully moved for summary judgment. Price timely brought this appeal.

Summary judgment is proper only when there are no genuine issues of material fact to be litigated, and the party is entitled to judgment as a matter of law. *Linn v. NationsBank*, 341 Ark. 57, 14 S.W.3d 500 (2000). On appellate review, we determine if summary judgment was appropriate based on whether the evidentiary items presented by the moving party in support of the motion leave a material fact unanswered. *Id.* We scrutinize the pleadings, affidavits, and other documents filed by the parties. *Id.* When a grant of summary judgment involves the application of legal rules, we determine whether the prevailing party was entitled to judgment as a matter of law. *Bailey v. Benton*, 2011 Ark. App. 230, --- S.W.3d ---. We review a circuit judge's conclusions on a matter of law de novo and give it no deference on appeal. *Id.*

Price argues on appeal that the trial court erred in finding that his motion was barred by the doctrine of res judicata. In *Paschal v. Paschal*, 2011 Ark. App. 515, this court recently discussed the doctrine of res judicata:

> The concept of res judicata has two facets, one being claim preclusion and the other issue preclusion. Under claim preclusion, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim. Claim preclusion (res

> judicata) bars not only the relitigation of claims which were actually litigated in the first suit, but also those which could have been litigated. Where a case is based on the same events as the subject matter of a previous lawsuit, claim preclusion will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies. Under issue preclusion (collateral estoppel), a decision by a court of competent jurisdiction on matters which were at issue, and which were directly and necessarily adjudicated, bars any further litigation on those issues by the plaintiff or his privies against the defendant or his privies on the same issue. The true reason for holding an issue to be barred is not necessarily the identity or privity of the parties, but instead to put an end to litigation by preventing a party who has had one fair trial on a matter from relitigating the matter a second time.

Id. at 5—6(citations omitted). We hold that the trial court did not err in finding that Price's cause of action was barred by res judicata.

Price's 2010 motion does not differ in any material degree from his 2009 cause of action. In his 2009 complaint, Price asserted that Griffin had been "unjustly enriched," a theory that sounds in equity. *Nat'l Bank of Ark. v. River Crossing Partners, LLC*, 2011 Ark. 475, --- S.W.3d ---. To the extent that he is arguing that the trial court erred in granting summary judgment in his first cause of action, that argument is barred by his failure to appeal from that case. The doctrine of res judicata prohibits a court from reconsidering issues of law and fact that have already been decided in a prior action, even when the party failed to perfect its appeal. *Clampitt v. Geurin*, 2010 Ark. App. 558. Moreover, on appeal of a second lawsuit, the decision of the first lawsuit is not only conclusive of every question of law or fact decided in the former appeal, but also of those that could have been, but were not, presented. *Id.* (citing *May v. May*, 267 Ark. 27, 589 S.W.2d 8 (1979)). Accordingly, all of Price's statute-of-limitations arguments are barred by his failure to appeal from the order dismissing his 2009

complaint.

Price next argues that the trial court made an alternative ruling that his case was dismissed pursuant to Rule 60. We do not agree that the trial court made such a ruling. As noted previously, it merely stated that "if [the 2009 complaint] had not been filed Rule 60 would apply to this case." This finding could be interpreted to mean, as Price apparently concludes, that the trial court would find that his motion was untimely as it sought to correct an error after ninety days, which is proscribed by Rule 60(a). However, it also could be interpreted to mean that the trial court would grant him relief under Rule 60(b), which states that a trial court may at any time correct clerical mistakes in judgments, decrees, orders, or other parts of the record and errors therein arising from oversight or omission. Nevertheless, because we have affirmed the trial court's primary ground for dismissing Price's motion, we need not resolve this question.

Affirmed.

HOOFMAN and BROWN, JJ., agree.