

OBIANUJU OBI

NO. 21-C-352

VERSUS


FIFTH CIRCUIT

MADUABUCHI ONUNKWO

COURT OF APPEAL

STATE OF LOUISIANA

FIFTH CIRCUIT COURT OF APPEAL
A TRUE COPY OF DOCUMENTS AS
SAME APPEARS IN OUR RECORDS


Susan S. Buchholz
First Deputy, Clerk of Court

July 09, 2021

Susan Buchholz
First Deputy Clerk

IN RE OBIANUJU OBI

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT, PARISH OF ST. JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE J. STERLING SNOWDY, DIVISION "C", NUMBER 74,551

Panel composed of Judges Susan M. Chehardy,
Fredericka Homberg Wicker, and Jude G. Gravois

WRIT GRANTED; RULING REVERSED; MATTER REMANDED

Relator/plaintiff, Obianuju Obi, seeks this Court's supervisory review of the trial court's June 10, 2021 ruling which sustained defendant, Maduabuchi Onunkwo's, exception of *res judicata*. For the reasons that follow, we grant this writ application, reverse the trial court's ruling which sustained defendant's exception of *res judicata*, and remand the matter to the trial court for further proceedings.

On April 12, 2020, plaintiff filed a Motion for Final Periodic Spousal Support and for Sole Custody of the Children and Other Incidental Relief. In her motion, plaintiff sought final periodic spousal support, alleging that during the course of their marriage, defendant committed extensive acts of domestic abuse against her. Additionally, pursuant to La. C.C. arts. 134(A) and (B), La. R.S.

9:341, and La. R.S. 9:361-367,¹ plaintiff sought sole custody of the couple's four minor children because "[d]uring the course of the marriage, [d]efendant perpetuated numerous acts of extensive and severe domestic abuse and violence against [p]laintiff, often in the children's presence." She alleged that defendant is unrepentant and has not undergone any treatment for his conduct. Finally, pursuant to La. R.S. 9:361-367, because of defendant's alleged history of domestic violence and abuse against plaintiff, plaintiff asserted that defendant is liable to her for attorney's fees, court costs, and all costs of therapy and treatment necessitated by his domestic violence.

In response, defendant filed exceptions of no cause of action, *res judicata*, and vagueness. Regarding the exception of *res judicata*, defendant argued that plaintiff's allegations of domestic abuse against him were previously litigated. Defendant stated that plaintiff previously filed a Petition for Protection from Abuse in which she asserted two alleged instances of abuse which occurred on May 15, 2019 and November 10, 2018. An *ex parte* temporary restraining order ("TRO") was granted. Subsequently, on December 6, 2019, the parties entered into a Consent Judgment. The Consent Judgment, which by its own terms expired on June 6, 2020, dismissed the TRO and rendered a civil injunction against defendant. Defendant argued that plaintiff's allegations of domestic abuse were litigated when she filed her Petition for Protection from Abuse and then dismissed it via the

¹ La. C.C. art. 134(A) lists the 14 factors for determining the best interest of the child. La. C.C. art. 134(B) provides:

In cases involving a history of committing family violence, as defined in R.S. 9:362, or domestic abuse, as defined in R.S. 46:2132, including sexual abuse, as defined in R.S. 14:403, whether or not a party has sought relief under any applicable law, the court shall determine an award of custody or visitation in accordance with R.S. 9:341 and 364. The court may only find a history of committing family violence if the court finds that one incident of family violence has resulted in serious bodily injury or the court finds more than one incident of family violence.

La. R.S. 9:341 provides for supervised visitation between the abusive parent and the abused child or children pending the fulfillment of certain conditions. La. R.S. 9:364 creates a presumption that no parent who has a history of perpetrating family violence, as defined in La. R.S. 9:362, or domestic abuse, as defined in La. R.S. 46:2132, shall be awarded sole or joint custody of children.

Consent Judgment. As exhibits to his exceptions, defendant included: the December 6, 2019 Consent Judgment (Exhibit A), a March 5, 2020 minute entry (Exhibit B), screen shots of text messages between the parties, a dinner receipt, and a reservation confirmation (Exhibit C); a March 4, 2020 letter from Tara Thibodaux, LMFT, noting that she had been seeing the couple since December 19, 2019 for counseling (Exhibit D); and a July 31, 2020 letter from Dr. Henry Cartozzo, noting the dates defendant attended therapy between October 25, 2019 and July 3, 2020 (Exhibit E).

A hearing on the exceptions was held on May 26, 2021. Following argument, the trial court orally denied the exceptions of no cause of action and vagueness and granted the exception of *res judicata* as to all claims made in plaintiff's Petition for Protection from Abuse. On June 10, 2021, a written judgment to this effect was signed.²

In her writ application, plaintiff argues that the trial court erred in applying *res judicata* to bar the claims of domestic abuse raised in her Petition for Protection from Abuse. She argues that the claims of domestic abuse were never heard by the court or litigated. Further, she argues that a close reading of the Consent Judgment reveals that the only thing that was dismissed was the TRO and the dismissal was not "with prejudice." Further, she argues that the Consent Judgment is not a final judgment to which *res judicata* applies as it did not dispose of the merits of plaintiff's petition and has since expired. Finally, she argues that the trial court erred when it admitted inadmissible hearsay exhibits attached to defendant's exception, specifically, exhibits C, D, and E.

² Following May 26, 2021 hearing, the parties signed a Consent Judgment that dismissed plaintiff's request for child support because there is a child support case pending between the parties and the State; stayed the case until final resolution of this writ application; and on an interim basis, kept the previous interim order in effect regarding custody and visitation.

The doctrine of *res judicata* bars re-litigation of matters that have been previously litigated and decided. *Mangiaracina v. Avis Budget Grp., Inc.*, 16-211 (La. App. 5 Cir. 9/22/16), 202 So.3d 171, 176. Appellate courts review exceptions of *res judicata* using the *de novo* standard of review. *Woodlands Dev., L.L.C. v. Regions Bank*, 16-324 (La. App. 5 Cir. 12/21/16), 209 So.3d 335, 340. The party pleading the exception has the burden of proving the elements of *res judicata* by a preponderance of the evidence. *Rudolph v. D.R.D. Towing Co., LLC*, 10-629 (La. App. 5 Cir. 1/11/11), 59 So.3d 1274, 1277. The doctrine of *res judicata* is *stricti juris*, and any doubt concerning application of the principle of *res judicata* must be resolved against its application. *Bourgeois v. A.P. Green Indus.*, 09-753 (La. App. 5 Cir. 3/23/10), 39 So.3d 654, 657, *writ denied*, 10-923 (La. 6/25/10), 38 So.3d 341.

La. R.S. 13:4231 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.

The Louisiana Supreme Court has established the following elements for “finding that a second action is precluded by *res judicata*: ‘(1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; and (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.”” *Chevron U.S.A., Inc. v. State*, 07-2469 (La. 9/8/08), 993 So.2d 187, 194 (citing *Burguieres v. Pollingue*, 02-1385 (La. 2/25/03), 843 So.2d 1049, 1053).

However, certain exceptions to the application of *res judicata* exist. La. R.S. 13:4232 provides:

- A. A judgment does not bar another action by the plaintiff:
 - (1) When exceptional circumstances justify relief from the *res judicata* effect of the judgment;
 - (2) When the judgment dismissed the first action without prejudice; or,
 - (3) When the judgment reserved the right of the plaintiff to bring another action.

- B. In an action for divorce under Civil Code Article 102 or 103, in an action for determination of incidental matters under Civil Code Article 105, in an action for contributions to a spouse's education or training under Civil Code Article 121, and in an action for partition of community property and settlement of claims between spouses under R.S. 9:2801, the judgment has the effect of *res judicata* only as to causes of action actually adjudicated.

Upon review, based on the evidence presented, we find that the trial court erred in granting defendant’s exception of *res judicata*. Although the Consent Judgment entered into between the parties in response to the Petition for Protection from Abuse clearly dismissed the TRO, it did not specifically dismiss the Petition for Protection from Abuse. Further though the TRO was dismissed, the Consent Judgment does not specify whether that dismissal was with or without prejudice. When a judgment is silent as to whether it is dismissed with or without prejudice, the dismissal must be without prejudice. *Allen v. Allen*, 16-0407 (La. App. 1 Cir. 12/22/16), 210 So.3d 477, 480; *State ex rel. Dept, of Soc. Serv. v. A.P.*, 02-2372 (La. App. 1 Cir. 6/20/03), 858 So.2d 498, 503 n.10. Based on the language of the Consent Judgment, it is unclear whether the parties intended to dismiss the allegations of domestic abuse made in the Petition for Protection from Abuse. Further, pursuant to La. R.S. 13:4232(B), considering the terms of the Consent Judgment, it does not appear that the allegations of domestic abuse raised the

Petition for Protection from Abuse were “actually adjudicated.” Those allegations could be determinative as to whether under La. R.S. 9:364, sole custody of the children should be awarded to plaintiff.

In support of his exception, defendant relied on *Hoddinott v. Hoddinott*, 18-1474 (La. 12/17/18), 258 So.3d 588, where the Supreme Court issued a *per curiam* opinion finding that the record did not support a finding that *res judicata* was precluded by exceptional circumstances. There, the plaintiff sought a divorce pursuant to La. C.C. art. 103(4) asserting specific allegations of domestic abuse by the defendant during the marriage. *Hoddinott v. Hoddinott*, 17-0841 (La. App. 4 Cir. 8/1/18), 253 So.3d 233, 235. A judgment of divorce was granted under La. C.C. art. 102, and the parties subsequently signed a consent judgment. The consent judgment specifically dismissed with prejudice any claims made pursuant to La. C.C. art. 103(4) based on physical violence, and it further provided that the defendant would pay rehabilitative spousal support to the plaintiff in the amount of \$4,000 per month for a period of thirty-six months. *Id.* Subsequently, the plaintiff filed a petition seeking damages under La. C.C. art. 2315, which set forth specific instances of domestic abuse that she had previously alleged. Upon review, the Fourth Circuit found that under the exceptional circumstances exception to *res judicata*, the trial court erred in granting defendant’s exception of *res judicata*. *Id.* at 243-244. In its *per curiam* opinion, however, the Supreme Court found that the record in the case did not support a finding that *res judicata* was precluded by exceptional circumstances because the language of the consent judgment dismissed with prejudice the plaintiff’s claims of physical violence and domestic abuse and she received a “substantial sum” in the form of rehabilitative spousal support. *Hoddinott*, 258 So.3d at 588. Unlike in our case, the consent judgment in *Hoddinott* clearly dismissed the plaintiff’s claims of domestic abuse with prejudice.

Considering the foregoing, and especially that any doubt concerning the application of the principle of *res judicata* must be resolved against its application, we find that the trial court erred in granting the exception of *res judicata* as to all claims made in plaintiff's Petition for Protection from Abuse. Accordingly, we grant this writ application, reverse the trial court's ruling granting defendant's exception of *res judicata*, and remand the matter to the trial court for further proceedings.

Gretna, Louisiana, this 9th day of July, 2021.

JGG
SMC
FHW

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **07/09/2021** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

21-C-352

E-NOTIFIED

40th District Court (Clerk)
Honorable J. Sterling Snowdy (DISTRICT JUDGE)
Christy M. Howley (Respondent) Richard L. Ducote (Relator)
M. Elizabeth Bowman (Respondent)

MAILED

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