

NOT DESIGNATED FOR PUBLICATION

PATRICK J. SPEZIO, * **NO. 2003-C-0899**
ADMINISTRATOR OF THE * **COURT OF APPEAL**
SUCCESSION OF LORRAINE * **FOURTH CIRCUIT**
H. SPEZIO * **STATE OF LOUISIANA**

VERSUS

SUCCESSION OF PHILIP J. *
SPEZIO, SR., ET AL. *

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ON APPLICATION FOR SUPERVISORY WRITS DIRECTED TO
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-3026, DIVISION "C"
Honorable Roland L. Belsome, Judge

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Judge Dennis R. Bagneris, Sr.

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(Court composed of Judge Joan Bernard Armstrong, Judge Dennis R.
Bagneris, Sr., and Judge Michael E. Kirby)

Jeffrey D. Salzer
GARDNER & KEWLEY
1615 Metairie Road
Suite 200
Metairie, Louisiana 70005

ATTORNEY FOR PATRICK J. SPEZIO, ETC.

Harold E. Molaison
Adrian F. LaPeyronnie, III
MOLAISON & GREENBERG, L.L.C.
230 Huey P. Long Avenue
Gretna, Louisiana 70053

**COUNSEL FOR SUCCESSION OF PHILIP J. SPEZIO, SR.,
PHILIP J. SPEZIO, JR., PATRICIA ANN SPEZIO AND
PHYLLIS SPEZIO RICHARDS**

**WRIT GRANTED, REVERSED, DISMISS PATRICK SPEZIO'S
LAWSUIT
STATEMENT OF THE CASE**

Defendants, the Succession of Philip J. Spezio Sr., Philip J. Spezio Jr., Patricia Ann Spezio and Phyllis Spezio Richards, seek supervisory review of the trial court's denial of their exception of res judicata.

Plaintiff Patrick J. Spezio, as Administrator of the Succession of his mother, Lorraine H. Spezio (who predeceased her husband, Philip Spezio Sr.), filed a Petition for Accounting on February 20, 2001 against the Succession of Philip Spezio Sr., Philip Spezio Jr., Patricia Ann Spezio and Phyllis Spezio Richards (the latter three being children of Philip Spezio Sr. by a prior wife). Patrick Spezio sought to secure possession of Lorraine Spezio's interest in the former community between Lorraine and Philip Spezio Sr.

Meanwhile, on March 20, 2000, more than one year earlier, in a separate case entitled Succession of Philip Joseph Spezio Sr., a judgment of possession was rendered sending Philip Spezio Sr.'s testamentary heirs, Patrick Spezio, Philip Spezio Jr., Patricia Ann Spezio and Phyllis Spezio Richards, into possession of all property "owned" by Philip Spezio Sr. at the

time of his death, in the proportion of an undivided one-fourth (1/4) interest each. This judgment of possession apparently included Lorraine Spezio's share of the community.

Defendants in the instant case filed an exception of res judicata as to Patrick Spezio's Petition for Accounting, claiming that his action was barred by res judicata because of the March 20, 2000 judgment of possession rendered in Philip Spezio Sr.'s succession.

The matter came for hearing on April 23, 2002, when the trial court denied the exception. Defendants filed a notice of intent on May 8, when the trial court set the return date for May 25, 2003.

FACTS

Some related facts are set forth in Spezio v. Spezio, unpub. 2001-1789 (La. App. 4 Cir. 4/24/02) (Waltzer, Murray, Kirby), a copy of which is included in defendants' writ application. In 2001-CA-1789, this court upheld the dismissal of an action by Patrick Spezio against Philip Spezio Jr. on an exception of res judicata. This court found res judicata based on the same March 20, 2000 judgment of possession upon which defendants in the instant case base their exception of res judicata.

In Patrick Spezio's action at issue in Spezio v. Spezio, unpub. 2001-1789 (La. App. 4 Cir. 4/24/02), he sought damages for breach of trust,

breach of fiduciary duty, etc. from Philip Spezio Jr. who, as trustee, revoked a trust set up by Philip Spezio Sr., the corpus of which was Philip Spezio Sr.'s interest in the residence in which he and Lorraine Spezio had lived, and in which Philip Spezio Sr. resided until his death. The residence was subsequently included as part of Philip Spezio Sr.'s estate, and the aforementioned March 20, 2000 judgment of possession sent Patrick Spezio and his three half-siblings into possession of an undivided one-fourth interest in that residence and other property.

Patrick Spezio appeared at the contradictory hearing on the petition for possession, and did not dispute the inclusion of any property in the judgment of possession. In 2001-CA-1789, this Court affirmed the trial court's dismissal of the action on an exception of res judicata, finding that Patrick Spezio should have asserted his claim regarding the family home in the proceeding in which the judgment of possession was rendered.

Patrick Spezio argued in one of his trial court memorandums in the instant case that defendants improperly cited and referred to this court's unpublished opinion in 2001-CA-1789, citing Rule 2-16.3, Uniform rules of Louisiana Courts of Appeal. Rule 2-16.3 states that unpublished opinions "shall not be cited, quoted, or referred to by any counsel, or in any argument, brief, or other materials presented to any court, except in continuing or

related litigation.” The instant case is “related” to this unpublished opinion, and thus can be cited by defendants.

NOTE: A writ was filed in the Louisiana Supreme Court on May 29, 2002 from this Court’s decision in Spezio v. Spezio, unpub. 2001-1789 (La. App. 4 Cir. 4/24/02). That writ, 2002-C-1451, is still pending at this time.

DISCUSSION

As amended by Act No. 521 of 1990, effective January 1, 1991, Louisiana's res judicata statute, 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 purpose of the law of res judicata is to promote judicial efficiency and final resolution of disputes by preventing needless relitigation.

Terrebonne Fuel & Lube, Inc. v. Placid Refining Co., 95-0654, p. 12 (La.

1/16/96), 666 So.2d 624, 631. However, the doctrine of res judicata is stricti juris, and any doubt concerning its application must be resolved against such application. Kelty v. Brumfield, 93-1142 (La. 2/25/94), 633 So.2d 1210, 1215.

A second action is precluded under La. R.S. 13:4231 when all of the following are satisfied: (1) the first judgment is valid; (2) that judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second action existed at the time the final judgment was rendered in the first action; and (5) the cause or causes of action asserted in the second action arose out of the transaction or occurrence that was the subject matter of the first action. Burguieres v. Pollingue, 2002-1385, p. 8 (La. 2/25/03), __ So. 2d __, __, 2003 WL 538685.

Defendants claim that Patrick Spezio's petition for accounting, ultimately seeking to assert his right to his mother's one-half of the community between her and Philip Spezio Sr., is barred by the res judicata effect of the March 20, 2000 judgment of possession, because he did not assert such rights in that proceeding.

It appears that defendants are correct in arguing that consistency with this court's decision in Spezio v. Spezio, unpub. 2001-1789 (La. App. 4 Cir. 4/24/02) requires that this court grant their writ application and dismiss

Patrick Spezio's suit on their exception of res judicata.

While defendants fail to attach a copy of Patrick Spezio's petition in the instant case to their writ application, it is clear that he filed the instant petition for accounting in an effort to assert his right to property that was the subject of the judgment of possession rendered on March 20, 2000, in which he essentially acquiesced that all of the property included therein was a part of Philip Spezio Sr.'s estate. The only significant difference for purposes of res judicata between the instant action and Patrick Spezio's action in 2001-CA-1789 is that the action there was brought by him in his individual capacity, while he brought the instant action in his capacity as administrator of his mother's estate. Patrick Spezio argues in his trial court memorandum that this difference in his capacity is one fact precluding application of res judicata.

In order for a second action to be precluded pursuant to La. R.S. 13:4231, the parties must appear in both suits in the same capacities. Burguières v. Pollingue, 2002-1385, p. 11, __ So. 2d at __. Defendants argue that because Patrick Spezio acquired ownership of all of the assets constituting the estate of his mother, and succeeded to all rights of his mother to pursue her community property interests at the moment of her death by virtue of the laws of seizin, he could have asserted the rights he

now asserts in the instant case.

Seizin is the legal investiture of one class of heirs with possession of the succession upon the death of the deceased, enabling the heirs who acquire seizin, at the instant of death, to bring all the actions the deceased could have brought. Baten v. Taylor, 386 So. 2d 333, 340 (La. 1979).

Ownership, on the other hand, is transmitted by operation of law at the moment of death to heirs and legatees designated by the Civil Code, regardless of whether they have seizin of a particular succession or whether they can ever have seizin. Id.

In Breaux v. Avondale Industries, Inc., 2002-1713 (La. App. 4 Cir. 3/12/03), 842 So. 2d 1115, this court cited three instances in which the preclusive effect of a judgment binds even a nonparty who is deemed a privy of the party in the action. One instance is where “the nonparty’s interests were adequately represented by a party to the action who may be considered the ‘virtual representative’ of the nonparty because the interests of the party and the nonparty are so closely aligned.” 2002-1713, p. 7, 842 So. 2d at ___.

Patrick Spezio, in his capacity as administrator of the estate of his mother, Lorraine Spezio, was not a party to the proceeding culminating in the judgment of possession. Thus, he is a “nonparty,” for purposes of the analysis in Breaux, supra. Considering the laws of seizin and ownership of

property by heirs, Patrick Spezio, in his individual capacity, must be considered to have been the virtual representative of himself as administrator of his mother's estate in the judgment of possession proceeding.

Accordingly, for purposes of res judicata, there is no difference between him in individual capacity in the former proceeding and him in his capacity as administrator of his mother's estate in the instant proceeding.

Patrick Spezio argued in his trial court memorandum in the instant case that a judgment of possession cannot serve to bar a second suit on the ground of res judicata. This Court did not discuss that issue in Spezio v. Spezio, unpub. 2001-1789 (La. App. 4 Cir. 4/24/02), because Patrick Spezio did not raise it. Defendants claim that the jurisprudence cited by Patrick Spezio for this proposition applies only to ex parte judgments of possession, not a judgment of possession rendered in an adversary proceeding where the party was present with counsel and acquiesced in the judgment, as in the instant case.

CONCLUSION

Accordingly, we find that the trial court erred in denying the exception of res judicata. Therefore, we grant the writ application, reverse the trial court, and dismiss Patrick Spezio's lawsuit.

WRIT GRANTED, REVERSED, DISMISS PATRICK SPEZIO'S

LAWSUIT