

**JO SCHERNBECK
HODDINOTT**

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NO. 2017-CA-0841

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COURT OF APPEAL

VERSUS

*

FOURTH CIRCUIT

**REGINALD KENNING
HODDINOTT, III**

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STATE OF LOUISIANA

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BELSOME, J., DISSENTS WITH REASONS

I respectfully dissent. *Res judicata* precludes the Plaintiff’s tort lawsuit. In the initial divorce proceeding, the Defendant filed for divorce pursuant to La. C.C. art. 102 and the Plaintiff filed a reconventional demand for divorce, under Art. 103(4), alleging abuse. A consent judgment was reached wherein the spousal abuse claims were dismissed with prejudice, without a reservation of rights to bring another action. After the divorce was finalized, the Plaintiff filed a petition for damages alleging the same instances of abuse set out in the Art. 103(4) divorce petition and four additional incidents that occurred prior to the signing of the consent judgment.

“Res judicata is an issue and claim preclusion device found both in federal law and state law.” *Terrebonne Fuel & Lube, Inc. v. Placid Ref. Co.*, 95-654, 95-671, p. 12 (La. 1/16/96), 666 So.2d 624, 631. “The purpose of both federal and state law on res judicata is essentially the same; to promote judicial efficiency and final resolution of disputes by preventing needless relitigation.” *Id.*

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. (emphasis supplied).

In addition, La. C.C.P. art. 425(A) provides:

A party shall assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation.¹

Admittedly, the legislature has carved out certain exceptions to the general *res judicata* rule, including exceptions related to divorce matters (“divorce exception”). See La. R.S. 13:4232² and La. C.C.P. art. 425(B).³ However, the legislative comments concerning the divorce exception demonstrate that it applies

¹ The 1990 comment to La. C.C.P. art. 425 states:

This amendment expands the scope of this Article to reflect the changes made in the defense of *res judicata* and puts the parties on notice that all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation must be raised.

² Specifically, La. R.S. 13:4232 states:

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.

³ La. C.C.P. art. 425(B) provides:

Paragraph A of this Article shall not apply to an action for divorce under Civil Code Article 102 or 103, an action for determination of incidental matters under Civil Code Article 105, an action for contributions to a spouse's education or training under Civil Code Article 121, and an action for partition of community property and settlement of claims between spouses under R.S. 9:2801.

only to divorce-related matters that are commonly addressed after a final divorce is granted, such as community property, child support or spousal support.⁴

This case involves a tort suit, not an incidental matter to the divorce; therefore, the divorce exception does not apply. Moreover, despite the interspousal immunity doctrine, the cause of action in tort existed at the time of the signing of the consent judgment and involves the same claims asserted in the Art. 103(4) divorce petition.⁵ Therefore, without the application of an exception to *res judicata*, the subsequent suit was barred.⁶ Under these circumstances, the trial court was not manifestly erroneous in granting the defendant's exception of *res judicata*. Accordingly, I dissent from the majority and would affirm the trial court's ruling.

⁴ *E.g.*, the 1991 comment to La. C.C.P. art. 425 points out that:

Paragraph B is added to this Article in order to make it clear that a party to a divorce action is not required to raise the actions commonly associated with divorce actions, such as claims for spousal and child support, in the divorce action itself. Such claims historically have been assertable after the divorce action has been concluded by judgment, and the added phrase makes it clear that this Article does not change the law in that respect.

See also, Newman v. Newman, 96-1062 (La. App. 1 Cir. 3/27/97), 691 So.2d 743 (where the First Circuit Court of Appeal noted that under La. C.C.P. art. 425 "a party is not required to assert all causes of action arising out of the transaction or occurrence if the action is one for determination of incidental matters to divorce.").

⁵ Unlike occupational exposure cases, which present peculiar difficulties in determining when an injured plaintiff's cause of action accrues due to lengthy latency periods, this is a traditional tort case in which the damages allegedly resulted from specific and identifiable acts of abuse causing traumatic injury. *See Becker v. Murphy Oil Corp.*, 10-1519, p. 47 (La. App. 4 Cir. 6/2/11), 70 So.3d 885, 917.

⁶ La. R.S. 13:4232(A) states:

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.