COURT OF APPEALS
DECISION
DATED AND FILED

November 5, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-3667

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

IN RE THE MARRIAGE OF:

WILLIAM ENGELHART,

PETITIONER-RESPONDENT,

v.

JUNE C. ENGELHART,

RESPONDENT-APPELLANT.

APPEAL from orders of the circuit court for Dane County: MARK A. FRANKEL, Judge. *Affirmed.*

Before Eich, Roggensack and Deininger, JJ.

EICH, J. June Englehart appeals from an order dismissing her petition to register and enforce the child-support provisions of a 1982 Indiana paternity judgment against William Engelhart, who later became her husband and,

later still, her ex-husband.[1] The trial court ruled that the petition was barred by the rules of claim preclusion and equitable estoppel, and also on grounds that the parties' marriage had merged William's pre-marital child-support obligation with their marital estate, which had been divided in the divorce proceedings. We conclude that principles of claim preclusion bar the petition and we therefore affirm the order.[2]

In April 1982, the Engelharts, who were not married at the time, stipulated to the entry of a judgment of paternity in an Indiana court. The judgment ordered William to pay child support of $50 per week through the office of the clerk of the (Indiana) court. William and June continued their relationship after the judgment and were married in 1987. They were divorced in Wisconsin in August 1992.

In January 1997, June filed a petition under ch. 769, STATS., to register and enforce the Indiana judgment in Wisconsin. Alleging that she had never received any payments under the judgment, she sought to collect support arrearages of $14,700 plus interest, from the date the judgment was entered in 1982. In dismissing June's petition, the trial court concluded that, among other things, it was barred by the rule of claim preclusion in that she could have raised the issue in the parties' divorce proceedings.

The rule of claim preclusion, formerly known as *res judicata*, renders the terms of a final judgment "conclusive in all subsequent actions

[1] She also appeals from an order denying her motion for reconsideration.

[2] Because we so conclude, we need not consider the alternative grounds for the trial court's decision.

between the same parties as to all maters which were litigated *or which might have been litigated* in the former proceedings." ***Lindas v. Cady***, 183 Wis.2d 547, 558, 515 N.W.2d 458, 463 (1994). Application of the rule requires that there be "an identity of parties … and an identity of claims in the two cases." ***Id***. We use a "transactional approach" to determine whether there is an identity of claims, asking only whether "the issue in the subsequent action could have been proffered or raised in the prior action." ***Hlavinka v. Blunt, Ellis & Loewi, Inc.***, 174 Wis.2d 381, 397 n.7, 497 N.W.2d 756, 762 (Ct. App.1993).

William argues that the trial court was correct: that all three elements of the claim-preclusion rule are present in both actions—the parties' divorce and the instant enforcement petition. It is undisputed that there is an identity of parties in the two proceedings and that a final judgment had been entered in the earlier proceeding; and William claims that any issue relating to his alleged premarital support arrearages could have been raised in the divorce trial. June disagrees. She contends that no "identity of claims" can exist in this case because she was prevented from raising the issue of William's support obligation under the Indiana judgment in the divorce proceedings when the court granted William's motion *in limine*, which, she says, "precluded introduction of pre-marital … support." In her words, "[I]f the trial court declined to [hear that] evidence then it cannot argue now that claim preclusion applies." That is the extent of her argument on the point, and we think it mischaracterizes both William's motion and the court's order.

In the course of the parties' 1992 divorce trial—which was heard by the same judge who denied June's support petition in the instant proceedings—William filed a motion *in limine* requesting that June be precluded from "commenting on or submitting any evidence relating to alleged payments, loans,

or other economic transactions which may or may not have occurred between [the parties] at any time prior to their marriage." The motion stated that the request was being made in response to June's "alleg[ations] that she loaned and/or gave significant funds to [William] during the years prior to their marriage," which William denied; and it went on to assert that allowing June's evidence would lead to trial of a variety of collateral issues. The motion also stated that it was grounded on ***Greenwald v. Greenwald,*** 154 Wis.2d 767, 454 N.W.2d 34 (Ct. App. 1990), where, relying on the supreme court's decision in ***Watts v. Watts,*** 137 Wis.2d 506, 405 N.W.2d 303 (1987), we held that a wife's "premarital contributions" to her husband did not constitute a proper subject for consideration in their subsequent divorce. ***Greenwald***, 154 Wis.2d at 789-90, 454 N.W.2d at 42-43.

At the hearing on William's motion, June's counsel confirmed that the evidence against which the motion was directed was limited to her alleged premarital economic contributions:

> My client's testimony would be that during the time that preceded their ... marriage … she made substantial contributions to Mr. Engelhart by way of loans, by way of the purchase of a condominium which they lived in … [and] by way of services she provided … to … him ….

With respect to ***Greenwald***, Jane's attorney acknowledged its existence, but urged the court not to follow it because, in her opinion, it was "wrong." The court, stating that it didn't feel it "had the … liberty … to simply conclude that a relatively recent Court of Appeals[] decision … is wrong on the merits," granted

William's motion, noting that June could, if she wished "pursue [her claim] in a separate forum and in a separate context."[3]

In short, there was nothing in William's motion *in limine* in the divorce case—or in counsel's statements or arguments at the hearing—or in the court's decision on the motion—that in any way related to or precluded June from advancing a claim for premarital child support. The court made that plain when, in rejecting June's argument in this case that its earlier decision on William's motion had precluded her from raising the support issue in those proceedings, it stated.

> I don't believe … the motion in limine that I granted was focused on the issue of child support entitlement that Ms. Engelhart is advancing here. [It] was really more of a focus on the cohabitation financial arrangements between the parties to the extent claims might have been made back and forth between [them]. I don't believe that this was specifically focused on the question of that out-of-state judgment, or at least there was nothing in my recollection or shown by the record where counsel for Ms. Engelhart was precluded from advancing that particular claim.

In ***A.B.C.G. Enterprises, Inc. v. First Bank Southeast, N.A.***, 184 Wis.2d 465, 472-73, 515 N.W.2d 904, 906 (1994), the supreme court stated:

> The doctrine of res judicata [i.e. claim preclusion][4] … is premised upon the maxim that litigation must come to an

[3] June suggests in her brief that this statement by the court related to her claim for premarital child support, and that it had the effect of precluding her from offering any evidence on that issue in the divorce proceedings. As indicated, however, there was nothing in the motion papers, or in counsel's arguments on the motion, even remotely related to premarital child support. The court's "separate forum" comment was plainly directed to June's counsel's statement in her argument to the court that "if the Court does grant the motion[,] … Ms. Engelhart would then want to pursue an Indiana action … [for] compensation for what she feels she deserves for her contributions prior to the marriage."

> end so as to ensure fairness to the parties and sound judicial administration. The doctrine is applied with a broad brush so as to achieve these goals. It embraces not only what has been litigated in previous proceedings, but also extends to issues that could have been litigated.

The trial court in this case, after discussing ***A.B.C.G. Enterprises***, concluded as follows:

> I am simply not persuaded that there is any reason that Ms. Engelhart[,] having been aware of this obligation[,] couldn't and shouldn't have advanced this claim for child support arrearage at the time of her divorce. And for her to come back to court five years later and to advance this now really runs afoul of the rather strong policy rationales underpinning the doctrine of claim preclusion.… There is not sufficient rationale set forth [by June] to justify reopening this issue at this very late date in this very stormy and shattered marriage.

We have independently reviewed the record in this case, and June has simply not persuaded us that the trial court's analysis is flawed in any way.

By the Court.–Orders affirmed.

Not recommended for publication in the official reports.

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[4] As indicated above, the terms are synonymous. *See* ***Lindas v. Cady***, 183 Wis.2d 547, 558, 515 N.W.2d 458, 463 (1994).