

IN THE COURT OF APPEALS OF IOWA

No. 0-215 / 09-1219
Filed May 26, 2010

JOHN NAZARCHYK,
Plaintiff-Appellant,

vs.

DAWN TALKINGTON-NAZARCHYK
n/k/a DAWN SAGE,
Defendant -Appellee.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

Former husband appeals the district court's dismissal of his application for rule to show cause upon former wife's failure to comply with their foreign divorce decree. **REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.**

John W. Hofmeyer III, Oelwein, for appellant.

Erik W. Fern, Decorah, for appellee.

Heard by Vaitheswaran, P.J., Doyle, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

DOYLE, J.

John Nazarchyk appeals the district court's dismissal of his application for rule to show cause for Dawn Talkington-Nazarchyk's failure to comply with their Texas divorce decree. Upon our review, we reverse and remand for further proceedings.

I. Background Facts and Proceedings.

John Nazarchyk and Dawn Talkington-Nazarchyk¹ were divorced in Texas in 1995. The parties' divorce decree awarded the marital real property to Dawn and further ordered:

[John] shall execute a special warranty deed transferring the real property awarded to [Dawn] and [Dawn] shall execute a deed of trust to secure assumption within three business days of the date of this decree whereby [John] shall retain a security interest in the property for so long as sums remain unpaid to the mortgage lien holder. At such time as the property is sold by [Dawn] or ceases to be the primary residence of [Dawn], whichever shall occur first, [Dawn] shall pay [John] the sum of \$27,500 for [John's] share of the equity in the property.

The decree also ordered John to pay Dawn child support for the parties' two minor children.

In approximately March 2003, Dawn sold the property. However, she did not pay John the amount owed to him under the decree. At some point, Dawn purchased and moved into a house in Iowa.

In December 2007, John filed his petition at law in Clayton County, Iowa. The Texas decree was attached to the petition. The petition set forth the pertinent provision of the Texas decree and applicable interest rate on judgments, alleged Dawn sold the property and did not pay John his equity

¹ Dawn Talkington-Nazarchyk is now known as Dawn Sage.

share, and prayed for judgment against Dawn in the amount of \$47,349.73, along with interest and court costs. The petition also prayed for “[s]uch other and further relief as the [c]ourt deems just and appropriate under the circumstances.” Dawn answered the petition and denied all allegations set forth in John’s petition.

In April 2008, John filed a motion for summary judgment. Dawn resisted, arguing that John had failed to pay child support and provide for the parties’ minor child as required in their divorce decree. She did not deny that she had sold the house and failed to pay John the amount set forth in the decree.

In June 2008, the district court granted John’s motion for summary judgment. Having made no denial to John’s request for admissions, Dawn was deemed by the court to have admitted the statements contained in the requests.² Specifically, the court found that Dawn had admitted she was responsible under the parties’ dissolution decree to pay John the sum of \$47,349.73 as of November 14, 2007, and interest at the rate of \$7.78 per day thereafter, and that Dawn had not paid any money towards the obligation. The court granted John’s motion for summary judgment and entered judgment in his favor and against Dawn for \$47,349.73 as of November 14, 2007, along with interest at the rate of \$7.78 per day. Dawn did not appeal the court’s ruling.

John then commenced proceedings to execute on the judgment. John attempted to garnish accounts he believed belonged to Dawn. Dawn contested the garnishment, asserting the accounts John was garnishing were not solely hers. Following a hearing on the matter, the court granted Dawn’s motion to

² See Iowa R. Civ. P. 1.510(2) (2007).

quash garnishment of the accounts belonging to the parties' child and denied Dawn's motion as to the monies condemned belonging to her.

On December 11, 2008, John filed a "motion for declaratory judgment of offset." John's motion stated that a debtor's examination of Dawn had been conducted and according to Dawn, she did not have the assets and the ability to pay the amount owed to John under the divorce decree. John requested that he be allowed to offset his child support obligation against Dawn's property settlement obligation. Dawn resisted the motion. Following a hearing on the matter, the court denied John's motion, concluding:

[T]he proposed offset is against public policy and not authorized by law on the facts of this case, because the debt is not related to the welfare of the children, and the child support is for current support of a minor child in a modest amount for a limited time period.

John filed a motion to reconsider, which the court denied. John did not appeal the court's denial of his motion.

In January 2009, John filed an application for rule to show cause why Dawn should not be cited and punished for contempt for her failure to comply with the parties' divorce decree. John's application further stated that Dawn had willfully failed to pay John the money due to him under the decree. John requested the matter be set for hearing to enable Dawn to show cause why she should not be cited and punished for contempt for failure to comply with the Texas decree. He asked the court to find Dawn in contempt and order her punished. John also requested attorney fees.

In response, Dawn filed a motion to dismiss. Dawn argued that the material facts of John's application were identical to the issues that were

disposed of in his earlier summary judgment motion, and as a result, John's application was barred under the principles of res judicata and claim preclusion.

Dawn sought attorney fees.

Following a hearing on the matter, the district court entered its order granting Dawn's motion to dismiss. The court explained:

The material facts of the instant contempt application are the same issues presented to the court at the summary judgment hearing.

The doctrine of issue preclusion prevents [John] from litigating these issues, and his relief is limited to the relief previously granted by the court. An election of remedies has occurred.

(Internal citation omitted.) The court declined to award attorney fees.

John now appeals.

II. Scope and Standards of Review.

Our standard of review of a district court order granting a motion to dismiss is for correction of errors of law. *Iowa Tel. Ass'n v. City of Hawarden*, 589 N.W.2d 245, 250 (Iowa 1999). The court's decision must rest on legal grounds. *Id.*

III. Discussion.

A. Res Judicata.

"The doctrine of res judicata embraces the concepts of claim preclusion and issue preclusion." *Spiker v. Spiker*, 708 N.W.2d 347, 353 (Iowa 2006) (citations omitted). Under the doctrine of issue preclusion, when an issue has once been determined by a valid and final judgment, that issue cannot again be litigated between the same parties in any future lawsuit. See *City of Johnston v. Christenson*, 718 N.W.2d 290, 297 (Iowa 2006). Issue preclusion serves two

purposes: (1) “to protect litigants from ‘the vexation of relitigating identical issues with identical parties or those persons with a significant connected interest to the prior litigation,’” and (2) “to further ‘the interest of judicial economy and efficiency by preventing unnecessary litigation.’” *Winnebago Indus., Inc. v. Haverly*, 727 N.W.2d 567, 571-72 (Iowa 2006) (citations omitted). In order for the prior determination to have a preclusive effect in subsequent litigation, the following four elements must be met:

(1) the issue determined in the prior action is identical to the present issue; (2) the issue was raised and litigated in the prior action; (3) the issue was material and relevant to the disposition in the prior action; and (4) the determination made of the issue in the prior action was necessary and essential to that resulting judgment.

Id. at 572.

The doctrine of claim preclusion provides:

[A] valid and final judgment on a claim precludes a second action on that claim or any part of it. The rule applies not only as to every matter which was offered and received to sustain or defeat the claim or demand, but also as to any other admissible matter which could have been offered for that purpose. Claim preclusion, as opposed to issue preclusion, may foreclose litigation of matters that have never been litigated. It does not, however, apply unless the party against whom preclusion is asserted had a “full and fair opportunity” to litigate the claim or issue in the first action. A second claim is likely to be barred by claim preclusion where the “acts complained of, and the recovery demanded are the same or where the same evidence will support both actions.”

Id. (citations and emphasis in original omitted). To invoke the doctrine of claim preclusion, three elements must be established:

(1) the parties in the first and second action were the same; (2) the claim in the second suit could have been fully and fairly adjudicated in the prior case; and (3) there was a final judgment on the merits in the first action.

Spiker, 708 N.W.2d at 353 (internal quotations and citations omitted).

Upon our review, we find that neither issue nor claim preclusion bars John's contempt action. John's petition was an action to reduce the Texas divorce decree to an Iowa judgment and set the amount of Dawn's obligation. John's application for rule to show to cause is not a second action nor is it a request to relitigate the issues in his original petition. Rather, it is a means employed in the underlying action seeking a determination whether Dawn willfully failed to comply with a court order, the 1995 Texas divorce decree. Moreover, the acts complained of and the relief demanded are not the same. Consequently, the doctrine of res judicata does not bar John's application for rule to show cause. We therefore conclude the district court erred in determining issue preclusion barred John's application.

B. Election of Remedies.

The doctrine of election of remedies "is designed to prevent double recovery for a single injury, not to prevent recourse to alternative remedies." *Whalen v. Connelly*, 621 N.W.2d 681, 685 (Iowa 2000) (citation omitted). In order to establish an election of remedies there must be (1) two or more remedies; (2) the remedies are inconsistent; and (3) one has been chosen. *Hartford-Carlisle Sav. Bank v. Van Zee*, 569 N.W.2d 386, 389 (Iowa Ct. App. 1997). The doctrine is narrow in application and not favored by the courts. *Id.* Under this doctrine, "[i]f the remedies sought are concurrent and alternative, there is no bar until satisfaction of the remedy has been achieved." *Id.*

"Inconsistency depends on whether the facts relied on as the basis for one remedy are repugnant and contradictory to the facts relied on as the basis for another remedy. When the remedies are factually consistent, . . . an inconsistency does not arise until one of the remedies is satisfied. A party may pursue consistent remedies

concurrently, even to final adjudication, until one of the claims is satisfied.”

Id. (citation omitted).

Here, the doctrine is not applicable. First, there is not “a single injury.” Although John’s underlying action stems from Dawn’s failure to pay John his share of the equity in the home, the money judgment he obtained is based upon what Dawn owes him, but the contempt order he seeks is based upon Dawn’s alleged willful failure to obey a court order. Additionally, the remedies sought are not inconsistent. The facts relied on as the basis for the Iowa money judgment are not repugnant and contradictory to the facts relied on as the basis for contempt. Also, we view contempt as an ancillary, not alternative, remedy. Dawn failed to pay John the amount ordered under the Texas divorce decree, and as a result, John may pursue the contempt action. We therefore conclude the district court erred in determining that John’s petition to reduce the Texas decree to an Iowa judgment constituted an election of his remedies barring his subsequent application for rule to show cause.

IV. Conclusion.

Because we conclude the district court erred in determining the doctrines of res judicata and election of remedies barred John’s application for rule to show cause, we reverse the district court’s dismissal of John’s application and remand for further proceedings.

REVERSED AND REMANDED FOR FURTHER PROCEEDINGS.