



compensation for what he believed was his one-half share.

¶ 3 The complication in the case arises from earlier suits between the two parties. Only one of the two other cases was allowed to go forward, and after much delay, Bruce attempted to file a counterclaim in that one case, which the trial court rejected because of the extensive delay. Two years later, Bruce filed this suit, which was ultimately dismissed on the basis of the doctrine of *res judicata*.

¶ 4

## FACTS

¶ 5

### Factual Background of 2010 Alexander County Case

¶ 6 At issue is a piece of property located in Williamson County. The property was purchased by the Jo Ann Benefield Revocable Trust on May 6, 1992, from Orley J. Bryant and Millie J. Bryant.

¶ 7 The Jo Ann Benefield Revocable Trust came into existence on August 10, 1989. Jo Ann Benefield was the settlor and the sole trustee of the trust, but was not the beneficiary. The beneficiaries to the Jo Ann Benefield Revocable Trust were her three sons—Eugene Woodney, Harry Todd Woodney, and Steven Jo Woodney. The record contains no documentation that the original August 1989 revocable trust agreement was ever altered or otherwise amended. As stated above, the trust obtained the Williamson County property at issue on May 6, 1992. The title to the property was recorded in the trust's name.

¶ 8 Bruce Benefield alleges that in 1996, Jo Ann Benefield, in her individual capacity, entered into a contractual arrangement with him with respect to this Williamson County property. Bruce agreed to invest \$59,000 in the property in exchange for delivery of a deed of conveyance which would place title to the premises in their joint names. Thereafter, Jo Ann and Bruce continued to expend funds on the property. On April 26, 1996, the deed was prepared, signed, and recorded in Williamson County in which Jo Ann, individually, conveyed this property to Bruce and Jo Ann, husband and wife, as joint tenants with right of

survivorship. Bruce, relying upon what Jo Ann told him, did not have his own title search conducted. At the time that the deed was recorded, the value of the property as listed in the tax bill was \$64,870.

¶ 9 After the jointly titled "deed" was recorded, Jo Ann and Bruce expended additional monies to improve the property. The Williamson County tax bills listed the property as being jointly titled and held. All real estate taxes were paid out of the couple's joint checking account.

¶ 10 In many of the legal documents, Bruce and Jo Ann represent that they were married.<sup>1</sup> In a 2007 pleading filed by Bruce in an earlier suit, he alleged that the marriage ended "more than 10 years ago." We have not been provided with copies of the divorce judgment and do not know how or if the real and personal properties were divided. Bruce contends that before the parties dissolved the marriage—prior to 1997—they entered into an oral business partnership, the purpose of which was to buy and sell real estate and acquire and rent real estate and mobile homes. Bruce alleges that this oral partnership agreement included the Williamson County property at issue. Bruce further contends that evidence of the partnership exists because the properties acquired were listed in both of their names. He alleges that he and Jo Ann both understood that "benefits, assets and liabilities of the partnership would be equally born by the parties."

¶ 11 In 2000, Bruce and Jo Ann placed the property at issue on the market. No sale occurred, and they decided to discontinue those efforts. Later, the property was relisted and a sale was arranged with Michael and Linda Musulin. The price paid by the Musulins for the property was \$290,000. The deed transferring the property to the Musulins, dated November

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<sup>1</sup>The record contains no document confirming a legal marriage, and Bruce's attorney stated at oral argument that the couple was not "really married."

8, 2005, was in Jo Ann's name only, as trustee of the Jo Ann Benefield Revocable Trust.

¶ 12 Bruce filed a complaint for a constructive trust in Alexander County on January 27, 2010. This complaint asked the court to enter judgment regarding the Williamson County property that was eventually sold to the Musulins. Bruce asked the court to award him 50% of the net proceeds of the sale of the premises to the Musulins. This was not the first claim filed between the parties regarding property transactions. The other claims that were filed separately by Jo Ann and Bruce were the basis of Jo Ann's motion to dismiss this current case for *res judicata*.

¶ 13 The Earlier Cases in Alexander and Williamson Counties

¶ 14 On March 14, 2006, Jo Ann filed a complaint for partition against Bruce in Alexander County alleging that four properties were jointly held by the parties. We do not have a full and complete record of this suit, but have been able to determine some of the facts through exhibits and various other documents contained within the record on appeal. The record on appeal is devoid of legal property descriptions or further information detailing the date on which these properties were acquired. Two of the four properties were located in Alexander County. We have been unable to determine where the other two were located, but we do not believe that the property at issue in this case on appeal is one of the remaining two properties. One parcel was described as a trailer park. The second piece of property was a mobile home with its surrounding real estate. The third property is described as a "dilapidated house and surrounding real estate located next to property occupied by the Plaintiff." The fourth property referenced in the partition complaint is an approximate eight-acre tract "located on Grapevine Trail."

¶ 15 Bruce filed a motion to dismiss this Alexander County partition complaint on April 28, 2006. In this motion, Bruce alleged that the real estate at issue was also at issue as a part of a partnership dissolution and accounting action he had filed in Williamson County. He

sought dismissal of the 2006 Alexander County case pursuant to section 2-619(a)(3) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(3) (West 2004)), stating that the case was superfluous in light of the Williamson County case. The trial court entered its order on this motion on June 13, 2006, denying Bruce's motion. The court noted that the Alexander County complaint was filed on March 14, 2006, while the Williamson County complaint filed by Bruce was filed three days later on March 17.

¶ 16 On March 17, 2006 (and before he sought to have Jo Ann's Alexander County partition suit dismissed), Bruce filed a separate complaint in Williamson County seeking a dissolution of the partnership and an accounting. He alleged that Bruce and Jo Ann entered into a partnership known as the Benefield Real Estate Partnership on June 1, 2002—apparently five years after the parties divorced. The purpose of the partnership was to buy and sell real estate for profit. The partnership agreement was oral. Bruce asked the court to dispose of the assets and divide the proceeds equally. Bruce contended that both personal property and realty purchased by the partnership between the dates of June 1, 2002, and October 3, 2004, were at issue. Bruce also asked the court to find a constructive trust because of claimed failures on the part of Jo Ann—using assets for personal benefit, failing to manage the property in a profitable manner, failing to equally contribute labor and capital, dissipating partnership assets, and retaining exclusive control over the assets. Jo Ann filed a motion to dismiss this complaint on May 3, 2006, also on the basis of section 2-619(a)(3) of the Code of Civil Procedure because of the pending Alexander County case. The Williamson County trial court ultimately dismissed this case on December 18, 2006. The court file was thereafter closed.

¶ 17 On January 24, 2007, the Alexander County trial court entered an order for partition, holding that the parties had reached an agreement to the issues raised in the complaint. The order found that the four parcels of land listed in Jo Ann's partition complaint were jointly

owned with Bruce and that the properties could not be divided and thus must be sold at auction subject to Jo Ann's homestead rights pursuant to section 12-901 of the Code of Civil Procedure (735 ILCS 5/12-901 (West 2004)). The order also granted Bruce leave to file a counterclaim against Jo Ann by which he could request an accounting on the income and expenses associated with those four properties. The court-imposed deadline for filing the counterclaim was within 21 days of January 4, 2007.

¶ 18 The properties were sold by public sale apparently early in the summer of 2007, as the report of sale was filed by the sheriff's department on July 3, 2007.

¶ 19 On November 1, 2007, Bruce filed a motion seeking leave to file a counterclaim against Jo Ann in the Alexander County partition case. This counterclaim was not the counterclaim for an accounting contemplated by the trial court in its earlier order of partition. In his proposed counterclaim only naming Jo Ann in her individual capacity as a defendant, Bruce claimed that partition as a remedy could not fully deal with the property held by both parties, as not all of the property jointly owned was realty. In this pleading, Bruce alleged that the partnership he wanted to be dissolved was formed shortly before the parties divorced—some date prior to 1997.<sup>2</sup> As a part of the alleged business partnership, Jo Ann and Bruce acquired numerous mobile homes, which he alleged are considered personal property, and thus not capable of being partitioned. Attached to his proposed counterclaim were 10 certificates of title of a vehicle representing 10 mobile homes, all of which were jointly titled

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<sup>2</sup>The record is unclear whether the 1997 partnership to buy, sell, and rent real estate and mobile homes alleged in his counterclaim is the same partnership Bruce alleged in his Williamson County complaint for dissolution of partnership and accounting. Bruce claimed that the partnership in his Williamson County complaint was orally formed on or about June 1, 2002.

with purchase dates ranging from March 9, 1997, to October 3, 2003. Given the purchase dates, and Bruce's allegation that his marriage to Jo Ann ended somewhere about 1997, most if not all of these purchases occurred after the parties were divorced. The record on appeal does not indicate whether Bruce's motion for leave to file a counterclaim was granted or denied.

¶ 20 On April 14, 2008, Bruce filed an amended motion for leave to file a counterclaim which expanded upon the original version. Bruce did not seek to add the Jo Ann Benefield Revocable Trust as a counterdefendant, as a third-party defendant, or as a respondent in discovery.<sup>3</sup> He did attempt to add all realtors, agencies, and title companies who were involved in some capacity with the sale of the Williamson County property at issue in this appeal. And, in his prayers for relief in this proposed counterclaim, Bruce asked the court to enter judgment against Jo Ann, both individually and as trustee of the trust. In addition to his allegations related to the mobile homes, Bruce also alleged that he and Jo Ann were the sole owners of real estate that was used and occupied as their residence. Regarding the residence, Bruce alleged that Jo Ann legally conveyed joint interest in this real estate to him, but legally sold the house to others without his consent. In count I, Bruce sought a dissolution of the partnership and an accounting. Counts II and III both alleged breach of contract. The subject realty in counts II and III was their residence—the same realty in Williamson County that is the subject of this appeal. The breach of contract allegations mirror the allegations in this case, with further explanation. In exchange for Jo Ann's deeding over joint title to Bruce for the two lots in Williamson County, Bruce alleged that he agreed to "contribute large sums of money for the construction of a home to be located

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<sup>3</sup>Contrary to the statement of Jo Ann Benefield's attorney at oral argument, Bruce did not attempt to add the Jo Ann Benefield Revocable Trust as a party to this case.

upon said premises." He alleged that he did not learn that the property's record owner was the Jo Ann Benefield Revocable Trust until some time after the property was sold and conveyed to Michael and Linda Musulin. The alleged breach of contract is a breach of the covenant of good title at the time that Jo Ann conveyed a joint interest in the property to Bruce. He sought monetary damages, an accounting, and the imposition of a constructive trust.

¶ 21 On May 13, 2008, the trial court entered a lengthy order outlining the history of the Alexander County partition case and denying Bruce's amended request for leave to file his counterclaim. In denying the motion, Judge Clarke stated:

"After reviewing the proposed pleading, and considering the delay in submitting the proposed pleading as well as the lack of any just cause for said delay, and the resolution by agreement of the parties of the original and necessary issues of this partition action, this Court finds that the interests of justice would not be served by granting Defendant leave to file Counter-Claim herein."

¶ 22 **ISSUE AND ANALYSIS**

¶ 23 In response to Bruce's complaint requesting a constructive trust in order to secure one-half of the proceeds of the sale of his former Williamson County marital home, Jo Ann successfully sought dismissal of the case on the basis of *res judicata*.

¶ 24 On appeal from a trial court's involuntary dismissal of a complaint pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619 (West 1998)), we must determine " 'whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.' " *Doyle v. Holy Cross Hospital*, 186 Ill. 2d 104, 109-10, 708 N.E.2d 1140, 1144 (1999) (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17, 619 N.E.2d 732, 735 (1993)). Our review is *de novo*. *In re Estate of Mayfield*, 288 Ill. App. 3d

534, 542, 680 N.E.2d 784, 789 (1997).

¶ 25

*Res Judicata*

¶ 26 *Res judicata* is a legal doctrine that serves to bar a subsequent action if an initial action concluded with a final judgment on the merits in a court of competent jurisdiction involving the same claim, and the same parties or their privies. *Sherrod v. Ramaswamy*, 314 Ill. App. 3d 357, 361, 732 N.E.2d 87, 90 (2000); *Cabrera v. First National Bank of Wheaton*, 324 Ill. App. 3d 85, 92, 753 N.E.2d 1138, 1144 (2001). The three required elements to establish *res judicata* are a final judgment on the merits rendered by a court of competent jurisdiction, identical causes of action, and identical parties or privies. *State Farm Fire & Casualty Co. v. John J. Rickhoff Sheet Metal Co.*, 394 Ill. App. 3d 548, 558, 914 N.E.2d 577, 588 (2009). The burden of proof rests upon the party invoking the doctrine. *Diversified Financial Systems, Inc. v. Boyd*, 286 Ill. App. 3d 911, 915, 678 N.E.2d 308, 310 (1997).

¶ 27 Bruce argues that *res judicata* is inapplicable because the action and the parties are not identical. Bruce contends that party identity was absent because in his Williamson County complaint (which was dismissed) and in his amended motion for leave to file a counterclaim in Jo Ann's Alexander County partition suit (which was denied), he did not name the Jo Ann Benefield Revocable Trust as a party. Because the proper owner of the property was at all times Jo Ann's trust, rather than Jo Ann personally, Bruce argues that privity of parties was absent. Bruce also argues that the causes of action were not identical. He argues that his dismissed Williamson County suit only involved properties acquired between 2002 and 2004, and since Jo Ann deeded him joint title to the property at issue in 1996, these two causes of action were not the same. Similarly, he argues that Jo Ann's Alexander County partition suit involved four other pieces of real estate and thus was not identical to this cause of action.

¶ 28 The trial court found that the Alexander County May 13, 2008, final order in the

earlier partition suit established the element of the required final judgment on the merits. The trial court stated that Bruce had the opportunity, by court order, to file a counterclaim in that Alexander County partition suit, and failed to do so. Because the doctrine of *res judicata* extends to actions that could have been raised and determined, the court found that the identity-of-causes-of-action element was met. See *Woolsey v. Wilton*, 298 Ill. App. 3d 582, 584, 699 N.E.2d 176, 177 (1998) (quoting *Torcasso v. Standard Outdoor Sales, Inc.*, 157 Ill. 2d 484, 490, 626 N.E.2d 225, 228 (1993)). The trial court also concluded that Jo Ann Benefield, individually, was in privity, by way of identity of interest, with the Jo Ann Benefield Revocable Trust, and therefore the final required element was met. Accordingly, the trial court dismissed Bruce's complaint on the basis of *res judicata*.

¶ 29 Final Judgment. Bruce does not dispute the finality of a judgment. Therefore, we confirm the trial court's finding that the May 13, 2008, judgment in the Alexander County partition suit (No. 06-CH-9) meets the requisite final judgment requirement.

¶ 30 Identity of Causes of Action. Bruce argues that because the partition suit did not involve the Williamson County property about which this case is based, there is no identity of cause of action.

¶ 31 There are two tests historically utilized in Illinois courts for determining whether the two causes of action are "identical," for *res judicata* purposes. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 307, 703 N.E.2d 883, 891 (1998). Under the "same evidence" test, the test is whether the evidence needed to sustain the second action would have sustained the first. *Torcasso*, 157 Ill. 2d at 490-91, 626 N.E.2d at 228. The alternate test used by Illinois courts is the "transactional test." *River Park, Inc.*, 184 Ill. 2d at 307, 703 N.E.2d at 891. With the transactional test, " ' ' 'the assertion of different kinds of theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.' " " " *Id.* (quoting *Rodgers v. St. Mary's Hospital of Decatur*, 149

Ill. 2d 302, 312, 597 N.E.2d 616, 621 (1992) (quoting *Pfeiffer v. William Wrigley Jr. Co.*, 139 Ill. App. 3d 320, 323, 484 N.E.2d 1187, 1189-90 (1985) (quoting *Baird & Warner, Inc. v. Addison Industrial Park, Inc.*, 70 Ill. App. 3d 59, 64, 387 N.E.2d 831, 838 (1979))). Under the transactional approach, the claim is viewed in factual terms and considered " 'coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; \*\*\* and regardless of the variations in the evidence needed to support the theories or rights.' " *River Park, Inc.*, 184 Ill. 2d at 309, 703 N.E.2d at 892 (quoting Restatement (Second) of Judgments § 24, Comment *a*, at 197 (1982)). In *River Park, Inc. v. City of Highland Park*, our Illinois Supreme Court discussed the difference between the two tests and, after analysis, confirmed that Illinois would no longer utilize the "same evidence" test in *res judicata* cases but would utilize the more liberal "transactional approach" in keeping with the Restatement (Second) of Judgments. *River Park, Inc.*, 184 Ill. 2d at 310-13, 703 N.E.2d at 893-94.

¶ 32 As the trial court properly pointed out in dismissing this case, *res judicata* can be applied not only to matters raised and determined in the first action but also to every other matter that could have been raised and determined in that first action. *Woolsey*, 298 Ill. App. 3d at 584, 699 N.E.2d at 177.

¶ 33 In the original partition case, Bruce had opportunities in which he could have easily brought the matter of this Williamson County property before the court. In fact, he attempted to do so when he filed his amended motion to file a counterclaim on April 14, 2008. The trial court properly held that this motion was filed too late in light of the court's order of January 24, 2007, stating that Bruce's deadline for filing was 21 days after January 4, 2007. Bruce's original counterclaim motion was not filed until November 1, 2007, with the amended motion on April 14, 2008—the filing dates of both proposed counterclaims were long after the deadline. While Jo Ann's complaint for partition did not include this property, her complaint

involved four other pieces of realty she and Bruce co-owned. The record contains no references or documentation of when these four properties were purchased. Bruce's proposed counterclaim alleged an oral partnership between he and Jo Ann that was formed prior to 1997 for the purpose of purchase and sale and/or rental of mobile homes and real estate. The Williamson County property at issue was deeded from Jo Ann to Jo Ann and Bruce on April 26, 1996, and so was apparently deeded pursuant to the Benefield oral partnership. We agree with the trial court and conclude that the transactional test has been satisfied, *i.e.*, that the proposed counterclaim arose out of the same set of operative facts, and that the causes of action are identical. There is no proof that the four properties at issue were obtained pursuant to a different partnership agreement than that utilized with the Williamson County property. Bruce could have filed a counterclaim in the Alexander County partition suit to seek an accounting, but did not.

¶ 34 Identity of Parties. The third required element is identity of parties or identity with those who are in privity with the parties. Bruce Benefield was a party in both cases. At issue is whether Jo Ann Benefield, who was a party in the first case, is in privity with the Jo Ann Benefield Revocable Trust named in the second case, because the trust was the titled owner of the Williamson County property.

¶ 35 Illinois courts rely upon the definition of privity from the Restatement of Judgments, as follows:

"A person is bound by a judgment in an action to which he is not a party if he is in 'privity' with a party. The relationships denominated by the term 'privity' fall into three general categories. The first includes relationships that are explicitly representative \*\*\*. The second includes the array of substantive legal relationships \*\*\*, in which one of those involved in the relationship is treated as having the capacity to bind the other to a judgment in an action to which the latter is not a party.

The third includes successors in interest to property \*\*\*." Restatement (Second) of Judgments § 75, Comment *a*, at 210 (1982).

Privity includes those relationships "under which the preclusive effects of a judgment extend beyond a party to the original action and apply to persons having specified relationships to that party." Restatement (Second) of Judgments, Introduction, at 1 (1982).

¶ 36 With this basic definition of privity, we turn to the terms of the Jo Ann Benefield Revocable Trust. Jo Ann Benefield is both the settlor and the trustee of this trust. She is not the beneficiary (the beneficiaries are her three sons), but the document contained instructions guiding her management duties with respect to properties held in the trust. The corpus of the trust was intended to be held, pursuant to the trust terms, and not distributed to the beneficiaries until each turned 35 years of age. Jo Ann retained the right "to alter, amend, revoke, or terminate the trust, in whole or in part."

¶ 37 While the trust was its own entity separate from Jo Ann the individual, Jo Ann retained complete power over the trust to modify or terminate the trust at any time. As settlor and trustee, Jo Ann Benefield had the ability to bind the trust legally. As the trial court stated in ruling that privity of parties existed and that *res judicata* was proper, the court must look to the identity of interests rather than simply at the nominal party identities. *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 296, 602 N.E.2d 820, 826 (1992) (citing *Smith v. Bishop*, 26 Ill. 2d 434, 440, 187 N.E.2d 217, 220 (1962) (Schaefer, J., dissenting)). We find that Jo Ann Benefield was in privity with the Jo Ann Benefield Revocable Trust as her duties and title with respect to the trust were merely representative. Therefore, we conclude that there was an identity of parties.

¶ 38 Having established all three *res judicata* elements, the trial court's judgment dismissing Bruce's complaint on the basis of *res judicata* was correct.

¶ 39

CONCLUSION

¶ 40 For the foregoing reasons, the judgment of the circuit court of Alexander County is hereby affirmed.

¶ 54 Affirmed.