2016 IL App (2d) 141228-U
No. 2-14-1228
Order filed June 28, 2016



IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| *In re* the MARRIAGE OF<br>MIHEE WEBB,<br><br>Petitioner-Appellee,<br><br>and<br><br>BRIAN WEBB,<br><br>Respondent-Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court<br>of Winnebago County.<br><br><br><br>No. 14-D-113<br><br>Honorable<br>Patrick Heaslip,<br>Judge, Presiding. |

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

**ORDER**

*Held*: The trial court correctly found respondent-appellant guilty of indirect civil contempt; in addition, we sanction respondent for filing a frivolous appeal.

¶ 1 This is the second time we consider an interlocutory appeal from Brian Webb, a *pro se* litigant, in these ongoing dissolution proceedings. This time, Brian appeals from the trial court's orders holding him in contempt.

¶ 2 In 1985, Brian and Mihee Webb were married. The marriage produced eight children. Throughout the marriage the parties resided on a working 30-acre farm in Davis, Illinois, which is in Stephenson County. In August 2013, Mihee filed a petition for dissolution of marriage in

the Circuit Court of Stephenson County. Mihee's dissolution petition was brought on two grounds: first, that there were irreconcilable differences between her and Brian and, second, that Brian was guilty of acts of mental cruelty. 750 ILCS 5/401(a)(1), (a)(2) (West 2012). A hearing was held on Mihee's petition in January 2014. (Elsewhere in the record, we learn that Mihee vacated the marital residence with the children in January 2014.) Before the hearing, Mihee withdrew the irreconcilable-differences allegation (a claim that requires the parties to have lived separately for 2 years unless both parties waive the separation requirement, 750 ILCS 5/401(a)(2) (West 2012)) and thus, the hearing proceeded solely on the allegation of acts of mental cruelty. After the hearing, the trial court found that Mihee had not established grounds of mental cruelty and the Stephenson County case was dismissed.

¶ 3 Two weeks later, Mihee filed a dissolution petition in Winnebago County alleging the same grounds—irreconcilable differences and mental cruelty. In this petition, however, Mihee alleged that she was residing in Rockford, in Winnebago County, and that she had lived separate and apart from Brian for six months. Brian filed a motion to dismiss based on the doctrine of *res judicata* (735 ILCE 5/2-619(a)(4) (West 2012))—which bars re-litigation between the same parties on the same issues (see *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008))—claiming that Mihee's dissolution petition in Winnebago County was barred by the prior judgment in the Stephenson County case. According to Brian, the case should have been dismissed to protect him "from the unjust burden of having to [relitigate] the same case ***." In March 2014, the trial court denied Brian's motion to dismiss and ordered the parties to attend mediation and comply with orders concerning visitation. In April 2014, Brian filed a motion to reconsider. At a hearing on that motion, Brian explained his argument concerning the doctrine of *res judicata* as follows:

> "No one has a right to a divorce. *** We have a right to file for a divorce but to get a divorce you have to prove grounds. Okay. She had an opportunity to do that [in the Stephenson County case]. She failed. This case has already been heard; already been decided. And it is—it would be a travesty of justice to force [me] to have to defend [my]self against a case, an identical case ***."

¶ 4 The trial court denied Brian's motion to reconsider. The court noted that while Brian relied on boilerplate broad statements concerning *res judicata* in commercial litigation cases, such as *Hudson v. City of Chicago*, 228 Ill. 2d 462, Mihee's attorney had cited *Lemanski v. Lemanski*, 87 Ill. App. 2d 405 (1967) and *Hoffman v. Hoffman*, 330 Ill. 413 (1928), cases which generally stand for the proposition that *res judicata* generally does *not* apply in dissolution proceedings. Furthermore, the court noted that even if it were not bound by authority, it would deny Brian's motion to dismiss as "against public policy."

¶ 5 Brian, however, found the court's decision unconvincing. Over the next several months, Brian, instead of turning his attention towards participating in mediation, embarked on a campaign to relitigate the denial of his motion to dismiss on *res judicata* grounds. At every turn, Brian filed motions to reconsider or vacate various court orders and to strike Mihee's pleadings; he filed multiple petitions to certify the question for interlocutory appeal, which the trial court denied, and further attempted to appeal on grounds of *forum non conveniens*, which we denied. *In re Marriage of Webb*, 2014 IL App (2d) 140688-U. At one point, the trial court judge entered an order barring Brian from filing any further motions without leave of court. Later that same day, Brian filed a motion to vacate that order without obtaining leave of court. In the months that followed, Brian continued to file frivolous motions without leave of court.

¶ 6 There really is no need to discuss Brian's motions or arguments any further because they all narrow down to a single assertion: That the dismissal of Mihee's dissolution petition in the Stephenson County case estopped her from filing for dissolution in Winnebago County. With

that in mind, we turn then to the central issue in this case—contempt. On April 29, 2014, the trial court entered an order appointing a guardian *ad litem* (GAL) for the parties' minor children. Based on a preliminary assessment of the parties' finances, the court ordered Brian to pay 100% of the GAL's retainer ($1,500) and any additional fees with the expected proceeds from the parties' 2013 tax refund and to split with Mihee the remainder of the 2013 refund, if any. The court also ordered Brian pay Mihee $1,300 per month in child support.

¶ 7 On July 10, 2014, Mihee filed a petition for rule to show cause based on Brian's failure to comply with the April 29 order, as well as a petition for sanctions under Supreme Court Rule 137 for having to respond to Brian's numerous frivolous motions in the interim. On August 8, 2014, the GAL filed her petition for attorneys fees, which alleged Brian had failed to pay her retainer. On August 26, 2014, Brian filed a 77-page "show of cause." The court scheduled a hearing for August 29, 2014.

¶ 8 At the hearing, Brian repeatedly interrupted Mihee's attorney, the GAL, and the trial court judge. After the hearing, the court granted Mihee's request for Rule 137 sanctions and ordered Brian to immediately pay $3,000 to Mihee's attorneys. The court also restricted Brian to supervised visitation stating, "based upon what I've heard from the [GAL]; what I've observed of you myself, *** anything other than supervised visitation with the children would endanger their welfare." The court attempted to discuss the case with the attorneys, but it repeatedly was forced to stop and to admonish Brian not to interrupt. The court also warned Brian that he was on the verge of being held in direct criminal contempt. During one exchange where the trial court judge was again admonishing Brian for interrupting him, Brian replied, "You work for me. I'm a taxpayer"; this earned Brian only further rebuke. Before the close of the hearing, as the trial court discussed the case schedule and the orders the attorneys would draft for the day, Brian

interrupted again, stating "I have a constitutional right to be heard. *** And I was denied that right. *** This is a lawless order. *** Therefore, I do not have to comply with the orders of this Court. They're lawless." (The omissions we have noted were the trial court's comments, which Brian had interrupted.) The case was continued for a further hearing on the rule to show cause and fee petitions.

¶ 9 Mihee filed a second petition for rule to show cause based on Brian's failure to pay her attorneys following the August 29 order. In November 2014, a hearing was held on both show-cause petitions, and Brian testified as follows:

> Q. Mr. Webb, you are aware that there was an order entered about your tax returns, correct?
>
> A. Yes.
>
> Q. And we're not here at this point to dispute why it was entered, but you are aware that there was an order entered?
>
> A. Yes.
>
> Q. And what is your recollection of what the order said regarding the tax return [for tax year 2013]?
>
> A. That I was to give my wife half of the tax return.
>
> [***]
>
> Q. *** Do you know how much you received [from your tax return]?
>
> A. It was approximately $7,000. I don't recall the exact amount, approximately $7,000.
>
> Q. What would half of that [have] been?
>
> A. Approximately, $3,500.
>
> Q. Did you turn over the $3,500 to your wife?

A. No.

[***]

Q. Okay. The payment towards the guardian ad litem fees of the $2,500 [(note: it was $1,500)] were you aware of that court order, yes or no?

A. Yes.

Q. And did you pay that?

A. No.

Q. Why did you not pay that?

A. I have a long list of reasons why. So many things just were not done right.

[***]

Q. Mr. Webb, after the April 29th, 2014 order was entered regarding GAL fees and the tax refund, did you have any intention to follow that court order and comply with the terms [of that order], yes or no, Mr. Webb?

A. No. Because there was no due process.

Q. After the August 29th, 2014 order was entered regarding the $3,000 in attorney's fees as a sanction, did you have any intention to follow that court order or its terms?

A. No. Because there was no due process.

Q. As we sit here today, do you have any intention to follow those court orders?

A. Still, there was no, no because there was no due process, and because this case should have been dismissed a long time ago. Res judicata, this case has already been decided.

¶ 10 Through further testimony, Brian revealed that instead of tendering the money to Mihee and her attorneys as ordered, he used the tax return funds, as well as funds from the sale of marital property ("a couple of cows") to pay various bills. Brian also revealed that he had over $30,000 in an individual retirement account, or IRA. The trial court found that Brian had "willfully, blatantly, failed to comply" with the court's orders and held Brian in indirect civil contempt. The court sentenced Brian to 180 days in the county jail, stayed that sentence, and ordered Brian to pay $3,832.51 (half of the parties' 2013 tax refund) to Mihee; $1,500 to the GAL; $4,500 to Mihee's attorneys for Rule 137 sanctions and the cost of pursuing them.

¶ 11 Brian appeals the contempt order. He claims that he should not be held in contempt because the trial court "lacks subject matter jurisdiction" and should have granted his motion to dismiss Mihee's dissolution petition on *res judicata* grounds; that he was "denied procedural due process"; and that his violation of court orders was not willfully contumacious, but rather was merely a good-faith attempt to test the validity of the court's orders denying his motion to dismiss on *res judicata* grounds. We affirm.

¶ 12 As noted, Brian's myriad motions and arguments are merely stalking horses for his *res judicata* claim. He argues that the Winnebago County case is "identical" to the Stephenson County case, but at most all he can say is that Mihee's claims in the Winnebago County case have the same legal labels—"irreconcilable differences" and "acts of mental cruelty"—as the claims she brought in the prior case. *Res judicata* is not about the legal label attached to a claim but about the substance underlying that claim; thus, parties are not estopped under *res judicata* unless the precise facts and issues were clearly determined in the prior judgment. *Wilson v. Edward Hospital*, 2012 IL 112898, ¶ 10; *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001); *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 338 (1996); *Torcasso v. Standard*

*Outdoor Sales, Inc.*, 157 Ill. 2d 484, 491 (1993). Here, while the pleadings from both proceedings are identical, the underlying substance of Mihee's claims in the Winnebago County case is not evident from the record. Mihee was not more specific regarding the nature of her claims in her dissolution petition, and Brian did not file a request for a bill of particulars before filing his motion to dismiss. Thus, there is no indication that Mihee was seeking to present the exact same allegations and evidence in the Winnebago County case that she either presented or could have presented in the Stephenson County case. As the movant, Brian bore the burden of showing that *res judicata* applies (*Hayashi v. Illinois Department of Financial & Professional Regulation*, 2014 IL 116023, ¶¶ 45-46; *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41) and absent a firm conviction that the claims are indeed the same, *res judicata* cannot apply.

¶ 13 At any rate, as the trial court noted, *res judicata* is an equitable doctrine; it is not reducible to a pat formula and, even when it applies, it is not an inexorable command. See generally *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390-91 (2001); *People v. Kines*, 2015 IL App (2d) 140518, ¶ 21. Given the lack of development concerning the substance of what occurred in the Stephenson County case and what was alleged in the Winnebago County case, the trial court's decision to deny Brian's motion to dismiss was, based on the record before us, undoubtedly correct. And even though the trial court was given only two cases to rely on, *Lemanski v. Lemanski*, 87 Ill. App. 2d 405 (1967) and *Hoffman v. Hoffman*, 330 Ill. 413 (1928), there is considerable authority for the proposition that, in dissolution proceedings, *res judicata* does *not* apply to a subsequent claim unless it is *truly* identical to a claim that has been heard and decided. *In re Marriage of Lyman*, 2015 IL App (1st) 132832, ¶¶ 67-71; *In re Marriage of Tutor*, 2011 IL App (2d) 100187, ¶¶ 22-23; *In re Marriage of Streur*, 2011 IL App (1st) 082326, ¶¶ 28-29; *In re Marriage of Colangelo & Sebela*, 355 Ill. App. 3d 383, 389 (2005); *In re Marriage of*

*Kohl*, 334 Ill. App. 3d 867, 880-82 (2002); *In re Marriage of Lehr*, 317 Ill. App. 3d 853, 860-61 (2000); *In re Marriage of Jackson*, 315 Ill. App. 3d 741, 743 (2000); *In re Marriage of Fields*, 283 Ill. App. 3d 894, 901-02 (1996); *In re Marriage of Brown*, 225 Ill. App. 3d 733, 739 (1992); *In re Marriage of Wilson*, 193 Ill. App. 3d 473, 480-81 (1990); *In re Marriage of Firestone*, 158 Ill. App. 3d 887, 892 (1987). Thus, contrary to Brian's argument, a dissolution petitioner does not strike out in one, but may have as many opportunities as are necessary to litigate each distinct dissolution claim on its own individual merit.

¶ 14 All of this is beside the point from Brian's contempt however. Brian is entitled to maintain that Mihee's suit should have been dismissed on *res judicata* for as long as he likes. But that is no justification for Brian's willful defiance of the trial court's orders concerning fees and sanctions. As the trial court told Brian repeatedly, Brian's mere belief that the court's orders were erroneous in no way diminished his duty to obey them. See *Maness v. Meyers*, 419 U.S. 449, 458 (1975); *People v. Nance*, 189 Ill. 2d 142, 145 (2000); *Cummings-Landau Laundry Machine Co. v. Koplin*, 386 Ill. 368, 385-86 (1944); *Country Mutual Insurance Co. v. Hilltop View, LLC*, 2014 IL App (4th) 140007, ¶ 26. Brian's arguments challenging the fees, sanctions, and contempt orders so plainly lack merit we need not address them. Most of his arguments merely reiterate his overarching *res judicata* argument, which is inapplicable as we have explained. Based on Brian's testimony, there was ample evidence for the trial court to find him guilty of indirect civil contempt.

¶ 15 In fact, the evidence of Brian's contempt was so overwhelming that it rendered this appeal—which again Brian used as a vehicle to challenge the trial court's ruling on his motion to dismiss—frivolous. By separate order, we directed Brian to file a written response to our show-cause order as to why he should not be sanctioned under Illinois Supreme Court Rule 375(b).

Brian filed his written response that contains his conclusory allegation that this appeal was pursued in good faith. He also points out that this appeal did not stay the proceedings in the trial court and therefore did not cause any "delay" in this case. We disagree. After considering the record, the parties' briefs, and Brian's show-cause statement, we determine under Rule 375(b) that this appeal was frivolous, that it was not taken in good faith, and that its underlying purpose was to harass Mihee, to increase the costs of this litigation, and to cause unnecessary delay.

¶ 16 In our minute order, we directed Mihee to submit an itemized statement of her expenses and attorney fees in connection with this appeal. Mihee's statement shows that she incurred $2,812.50 in attorney fees in connection with the briefing in this case. She was also required to pay a $15 appearance fee in this court. Accordingly, we affirm the judgment of the circuit court of Winnebago County holding Brian in contempt and, as part of our judgment, Brian is hereby ordered to pay Mihee $2,827.50.

¶ 17 Affirmed; sanction imposed.