2017 IL App (1st) 162587

THIRD DIVISION
August 30, 2017

No. 1-16-2587

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IN RE MARRIAGE OF:	)	Appeal from the
	)	Circuit Court of
LISA A. WONG,	)	Cook County
	)	
Petitioner-Appellant,	)	No. 2010 D 6740
	)	
v.	)	The Honorable
	)	Thomas J. Kelley,
ESTATE OF GEORGES A. CEHOVIC,	)	Judge Presiding.
	)	
Respondent-Appellee.	)	

PRESIDING JUSTICE FITZGERALD SMITH delivered the judgment of the court. Justices Lavin and Pucinski concurred in the judgment.

ORDER

¶ 1 Held: Dismissal based on principles of *res judicata* inappropriate while the case serving as the basis of *res judicata* is currently pending on appeal in the federal courts. Reversed and remanded with directions.

¶ 2 Petitioner-appellant Lisa Wong (Lisa) appeals from the grant of respondent-appellee Estate of Georges A. Cehovic's (the Estate) motion to dismiss pursuant to section 2-619 of the

Code of Civil Procedure (the Code) (735 ILCS 5/2-619) (West 2014)), dismissing with prejudice Lisa's petition pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)) by which Lisa sought to vacate the judgment of dissolution of marriage between herself and Georges A. Cehovic (Cehovic) in order to access the proceeds of a life insurance policy procured through an employer benefits plan, following the intestate death of Cehovic. Cehovic's designated beneficiary was his sister, Emma Cehovic Dixneuf (Emma), the executor of the Estate. On appeal, Lisa contends the circuit court erred in dismissing the petition. We reverse and remand with directions.

¶ 3 I. BACKGROUND

¶ 4 Petitioner Lisa Wong and Cehovic were married in 2007. A child, G.C., was born of this marriage in 2009. Lisa filed for dissolution of marriage in 2010. After extended discovery and pre-trial motions, the court held a multi-day trial in 2013 and into 2014. On July 16, 2014, the circuit court entered a memorandum judgment of dissolution of marriage (the judgment) detailing the division of marital and non-marital assets and debts, child support, child care expenses, school tuition, and health insurance coverage. The judgment did not contain any provision for either party to maintain life insurance. The judgment contained a "mutual release" section which provided:

> "28. Mutual Releases. To the fullest extent permitted by law, and except as otherwise provided herein, each of the parties does hereby forever relinquish, release, waive and forever quit claim and grant to the other, his or her heirs, personal representatives and assigns, all rights of maintenance, alimony, inheritance, descent and distribution, homestead, dower, community interest and all other right, title, claim, interest and estate as Husband and Wife, widow or widower, whether existing by reason

> of the marital relation between said parties hereto pursuant to any present or future law, or otherwise including any and all right, title, claim or interest which he or she otherwise has or might have or be entitled to claim in, to or against the property, assets and estate of the other, whether real, personal, marital or non-marital, whether community or separate, whether now owned or hereafter in any manner acquired by the other party, whether in possession or in expectancy and whether vested or contingent. Each party further covenants and agrees for himself or herself, his or her heirs, personal representatives and assigns, that neither of them shall at any time hereafter sue the other or his or her estate, heirs, personal representatives, grantees, devisees or assigns, attorneys or agents, for the purpose of enforcing any rights specified to be released, waived or relinquished under this Agreement; and each party further agrees that in the event any suit shall be commenced, this release, when pleaded, shall be and constitute a complete defense thereto. Each party further agrees to execute, acknowledge and deliver at the request of the other party, or his or her heirs, personal representatives, grantees, devisees, or assigns, any or all deeds, releases or other instruments and further assurances as may be required or reasonably requested to effect or evidence such release, waiver or relinquishment of such rights; provided, however, that nothing herein contained shall operate or be construed as a waiver or release by either party to the other of the obligation on the part of the other to comply with the express provisions of this Agreement."

No motion to reconsider was filed regarding the judgment of dissolution.

¶ 5 Prior to the issuance of the judgment of dissolution, on December 8, 2012, Cehovic filed a Rule 13.3.1 Financial Disclosure Statement by which he disclosed a life insurance policy

procured through his employer, Northwestern Memorial HealthCare's (NMH), benefits plan, valued at $200,000[1]. This basic plan was equal to one year of Cehovic's salary.

¶ 6 Also prior to the issuance of the judgment of dissolution, but after the filing of the above-mentioned financial disclosure statement, Cehovic procured a supplemental life insurance policy, also through the NMH benefits plan. This supplemental policy was worth three times his annual salary. It is this supplemental policy that is at issue here. In November 2013, Cehovic executed a "life insurance beneficiary change" form, designating his sister, Emma Cehovic, the beneficiary.

¶ 7 Cehovic died intestate in February 2015, and Lisa opened a probate case in the circuit court. She was named Independent Administrator of the Estate and Guardian of the Estate of the Minor Child of the parties. Following the opening of the Estate of Georges A. Cehovic, Lisa learned of the existence of the supplemental life insurance policy. She then sent a letter to the insurance administrator, Reliastar Life Insurance Company, demanding further documentation, alleging various debts owed by the estate, and requesting Reliastar to "refrain from distribution" until such matters are settled.

¶ 8 In May 2015, Emma filed a claim with Reliastar for the proceeds of the life insurance policies. She also filed a petition in probate court to remove Lisa as the administrator of the Estate, alleging a conflict of interest. In October 2015, the probate court denied Emma's motion, determining that the life insurance policy is "not an asset of the probate estate." The court entered an order indicating that Lisa intended to file a petition to vacate the judgment for dissolution of marriage. It found no conflict of interest with Lisa remaining as administrator of the Estate, but specifically allowed that Emma could "defend against such claims as her interests in the insurance policy could possibly be affected," and "[left] open the possibility of the appointment

[1] The parties represent that the actual amount is $263,000. The precise amount is not relevant to our inquiry here, as the parties do not dispute this basic insurance plan; Lisa conceded below that the proceeds from the basic policy belong to Emma.

of a Special Administrator to defend the estates interest in the dissolution of marriage proceeding upon request by Emma Cehovic."

¶ 9 Concurrently, in October 2015, Emma filed a complaint in federal court against Reliastar, alleging that Reliastar provided insurance to Cehovic through his employment with NMH, that she was the sole designated beneficiary, and that Reliastar had refused to honor her claim. *Dixneuf v. Wong*, 2016 WL 4366596 (United States District Court, N.D. Illinois) (slip opinion), *appeal pending, Emma Cehovic-Dixneuf v. Lisa Wong*, 7th Cir., March 13, 2017).[2] By that complaint, Emma sought a declaratory judgment that Reliastar should pay her claim. "Reliastar answered the complaint and included a counterclaim for interpleader brought against Dixneuf, and Lisa Wong ***, individually, and in her capacity as the Appointed Independent Administrator of the Estate of Cehovic, and in her capacity as the Guardian of the Estate of the minor child G.C." *Dixneuf v. Wong*, 2016 WL 4366596, 1. Lisa sought to recover Cehovic's death benefits, and Emma contended that "her brother specified in writing his intent that Emma should receive his death benefits." *Dixneuf v. Wong*, 2016 WL 4366596, 1.

¶ 10 In the federal case, Emma and Lisa also filed cross-claims against one another regarding disposition of the supplemental insurance proceeds. In her cross-claim for declaratory judgment, Lisa alleged that Cehovic never disclosed that he procured the supplemental life insurance policy using marital funds and named Emma as the sole beneficiary. She asked the court to create a constructive trust on the insurance proceeds in order to provide for the "support, education, and wellbeing" of the child. In March 2016, the district court granted Reliastar's motion to deposit founds and entered a final judgment on the interpleader. Emma then moved for summary judgment on the remaining claims. *Dixneuf v. Wong*, 2016 WL 4366596, 1.

[2] Lisa filed motions with this Court requesting this Court take judicial notice of certain documents in the federal court case. We took those motions with the case and here grant the motions.

¶ 11 In August 2016, the district court issued a memorandum opinion granting summary judgment to Emma. *Dixneuf v. Wong*, 2016 WL 4366596, ¶ 3. The court held that the supplemental life insurance policy fell within the definition of an employee welfare plan and is governed by the Employee Retirement Income Security Act of 1974 (ERISA) because it was part of a group life insurance plan established by NMH to provide life insurance benefits to its employees and their beneficiaries. *Dixneuf v. Wong*, 2016 WL 4366596, ¶ 2. In its determination, the court rejected what it called "[Lisa]'s conclusory speculation" regarding the applicability of ERISA safe harbor provisions, finding that "the totality of the facts show that the Supplemental Policy falls within the coverage of ERISA and does not fall within the ERISA safe harbor provisions." The district court said:

> "[Lisa] contends that employees at NMH paid the entire premiums for the Supplement Policy and that the policy may fall within the safe harbor provisions. Contrary to [Lisa's] conclusory speculation as to the applicability of the ERISA safe harbor provisions, the totality of the facts show that the Supplemental Policy falls within the coverage of ERISA and does not fall within the ERISA safe harbor provisions. It is clear that both the Basic Policy and Supplemental Policy are part of the same Group Plan. *** [Lisa] has not pointed to any evidence indicating that either policy was not a part of the Group Plan. The undisputed facts show that Reliastar acknowledges that the Group PLAN is governed by ERISA, and that NMH employees were provided with a notice of their ERISA rights when joining the Group Plan. Emma has pointed to evidence showing that NMH controls the terms and conditions of the Group Plan and administers the Group Plan, and Lisa has not pointed to evidence indicating otherwise. ***; *see also Postma v. Paul Revere Life Ins. Co*., 223 F.3d 533, 537 (7th Cir. 2000) (stating that the Court 'has

held that [a]n employer who creates by contract with an insurance company group insurance plan and designates which employees are eligible to enroll in it is outside the safe harbor created by the Department of Labor regulation') (internal quotations omitted) (quoting *Brundage-Peterson v. Compcare Health Serv. Ins. Corp*., 877 F.2d 509, 511 (7th Cir. 1989)). Thus, the Supplemental Policy is governed by ERISA." *Dixneuf v. Wong*, 2016 WL 4366596, 3.

The district court continued:

"II. Beneficiary Under ERISA

[Emma] argues that in accordance with ERISA she is entitled to the death benefits for the Supplemental Policy as the designated beneficiary. Pursuant to ERISA and the terms of the Supplemental Policy the designated beneficiary is entitled to receive the death benefits for that policy and [Emma] was the sole designated beneficiary. 29 U.S.C. § 1002(1); (8). The claims in this case are governed by ERIS and this court is not restricted from enforcing the terms of the Supplemental Policy under ERISA by any ongoing state court proceedings. *See Melton v. Melton*, 324 F.3d 941, 944 (7th Cir. 2003) (stating that 'ERISA preempts all state laws insofar as they may now or hereafter relate to any employee benefit plan which is subject to ERISA' and that 'ERISA preempt[ed] Illinois state law with respect to determining the rightful beneficiary of [the] ERISA-regulated group term life insurance policy'); *Metro. Life Ins. Co. v. Johnson*, 297 F.3d 558, 564 (7th Cir. 2002) (stating that '[g]enerally, ERISA preempts all state laws insofar as they may now or hereafter relate to any employee benefit plan which is subject to ERISA'). In accordance with [decedent] Cehovic's intent that Emma should be the sole

beneficiary of his life insurance policies, Emma is entitled to prevail in this action." *Dixneuf v. Wong*, 2016 WL 4366596, 2.

¶ 12 Lisa filed a motion to reconsider, which the district court denied. Lisa then filed a notice of appeal on March 10, 2017, in the United States Court of Appeals for the Seventh Judicial Circuit. This appeal is currently pending.

¶ 13 Meanwhile, back in the circuit court, Lisa filed a petition to vacate the judgment of dissolution of marriage pursuant to section 2-1401 of the Code (735 ILCS 5/2-1401 (West 2014)) in October 2015, followed by an amended petition in November 2015. By that petition, Lisa acknowledged that Cehovic had disclosed the basic life insurance policy, but argued that he failed to disclose the supplemental life insurance policy and used marital funds to pay the premiums for that policy from May 2013 to July 2014 (the date of their dissolution of marriage). She alleged:

> "13. Had [Cehovic] disclosed the $788,000 policy, [Lisa] would have asked the Court to order [Cehovic] to name the minor child, G.C., to be the beneficiary to pay for the support and education of [Cehovic's] child in the event of [Cehovic's] death. Had [Cehovic] disclosed the correct amount of his employer provided life insurance and the additional [$788,000] policy, [Lisa] would have asked the court to order [Cehovic] to name the minor child G.C. to be the beneficiary for all of the life insurance of [Cehovic] which would have been more than [$1 million] and would have been willing to incur the additional litigation and costs."

Lisa asked the court to vacate the judgment of dissolution of marriage, find that the supplemental life insurance policy was a marital asset, and asserted that, as Guardian of the Estate of G.C., the

court should award her the policy proceeds "to fulfill the obligations of the decedent to his minor child."

¶ 14 Following the filing of Lisa's section 2-1401 petition to vacate the dissolution of marriage, the court appointed Emma as Special Administrator of the Estate.

¶ 15 In November 2015, the Estate filed a motion to dismiss, pursuant to section 2-619 of the Code, Lisa's amended section 2-1401 petition, and an amended motion to dismiss pursuant to section 2-619 of the Code in February 2016. By this motion, the Estate, relying on *Melton v Melton*, 324 F.3d 941, argued that ERISA preempts all state laws " 'insofar as they may now or hereafter relate to any employee benefit plan' which is subject to ERISA. *Melton*, 324 F.3d at 944." Relying on *Egelhoff v. Egelhoff*, 532 U.S. 141 (2001), it argued that state law cannot invalidate an ERISA plan beneficiary designation by mandating distribution to another individual. Additionally, the Estate contended that the state court proceedings were preempted by federal court proceedings because the issue of the beneficiary to the life insurance policies was concurrently being litigated in federal court, that all necessary parties are parties to that case, and that the federal court case was filed prior to Lisa's post-judgment petition. The motion stated: "The Federal Court is litigating the same cause and will dictate, and has the sole authority, to determine who is the rightful owner of the death benefits of [Cehovic's] ERISA-regulated life insurance policy." Finally, the Estate argued that, even if Lisa were successful in her petition to vacate the dissolution of marriage, because Cehovic is now deceased, her remedy would be an action against the State as the sole heir because Cehovic died intestate.

The court granted the motion to dismiss pursuant to section 2-619 of the Code in August 2016, dismissing Lisa's petition to vacate the judgment for dissolution of marriage in its entirety. In its written order, it specified that it was granting the motion "pursuant to the oral findings of

the court." The oral findings of the court are included by transcript in the record on appeal, and reveal the court reviewed the federal case and found Lisa's claim was barred by the doctrine of *res judicata*. The court stated that, because the federal district court had issued a "final judgment, the doctrine of res judicata and/or collateral estoppel would apply relative to Lisa's claims to the supplemental life insurance policy. That would also warrant that Lisa's amended petition to vacate the judgment for dissolution of marriage be dismissed pursuant to 619.4."

¶ 16 Additionally, in regard to the issue of ERISA applicability, the court found the supplemental life insurance policy was governed by ERISA "as it is clear that the supplemental policy is part of the group life insurance policy established by Northwestern Memorial Health Care, Cehovic's employer, and does not fall within the safe harbor provisions of ERISA. It stated:

> "THE COURT: Pursuant to *Melton v. Melton*, 324 F.3d 941 (7th Cir. 2003), this Court also finds that ERISA preempts all state laws insofar as they may now or hereafter relate to any employee benefit plan which is subject to ERISA, and ERISA preempted the Illinois state law with respect to determining the rightful beneficiary of the ERISA regulated group term life insurance policy."

¶ 17 Regarding Lisa's claim that the court should enter a qualified domestic relations order awarding the supplemental life insurance policy to her, the court stated:

> "THE COURT: Counsel for Lisa has argued that this Court enter a qualified domestic relations order awarding the supplemental life insurance policy to Lisa and that the qualified domestic relations order would be an exception to ERISA. The Court finds that according to ERISA qualified domestic relations orders pertain to retirement benefits and not life insurance policies.

> This Court finds that since ERISA preempts state law relative to Lisa's claims to the supplemental life insurance policy such as Illinois law relative to constructive trust, Illinois law relative to fraud and Illinois statute regarding the Illinois Marriage and Dissolution of Marriage Act, that this is an affirmative matter which would warrant that Lisa's amended petition to vacate the judgment for dissolution of marriage be dismissed pursuant to Section 619.0."

¶ 18 Lisa filed a motion to reconsider, which the court denied. She now appeals.

¶ 19 II. ANALYSIS

¶ 20 On appeal, Lisa contends that the circuit court erred in granting the Estate's motion to dismiss pursuant to section 2-619 of the Code. Specifically, she argues that the court's reliance on *Dixneuf v. Wong*, 2016 WL 4366596, the district court case regarding the supplemental insurance proceeds here, as *res judicata* was error. She also argues that, regardless of the federal case, the supplemental life insurance policy here is not governed by ERISA. Because we find that the district court decision—which is now pending on appeal in the Seventh Circuit—is not a final order for purposes of the doctrine of *res judicata*, we reverse and remand with directions.

¶ 21 A motion to vacate under section 2-1401 provides the procedure by which orders entered in a cause, having become final after 30 days from their entry, may nonetheless be vacated. See 735 ILCS 5/2-1401 (West 2014). The purpose of a section 2-1401 petition is to bring facts to the attention of the trial court which, if known at the time the court entered the order, would have prevented the order's entry. See *In re Marriage of Gorman*, 284 Ill. App. 3d 171, 182 (1996). To obtain this relief, the petitioner must set forth in her section 2-1401 petition specific factual allegations concerning: (1) the existence of a meritorious claim; (2) due diligence in presenting this claim to the trial court in the original action; and (3) due diligence in filing the petition for

relief. See *S.C. Vaughan Oil Co. v. Caldwell, Trout & Alexander*, 181 Ill. 2d 489, 496 (1998); *Smith v. Airroom, Inc.*, 114 Ill. 2d 209, 220-21 (1986). The petitioner must demonstrate each of these three elements by a preponderance of the evidence. See *Smith*, 114 Ill. 2d at 221. Ultimately, whether a section 2-1401 petition is granted and a final order vacated lies within the sound discretion of the trial court and will not be disturbed unless it is apparent that the court abused its discretion. See *Smith*, 114 Ill. 2d at 221.

¶ 22 A section 2-619 motion to dismiss admits the sufficiency of the complaint, but asserts an affirmative matter that acts to defeat the claim. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31; *King v. First Capital Financial Services Corp.*, 215 Ill. 2d 1, 11-12 (2005); *Wallace v. Smyth*, 203 Ill. 2d 441, 447 (2002); see 735 ILCS 5/2-619(a) (9) (West 2014) (allowing dismissal when "the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim"). The question on review is whether a genuine issue of material fact precludes dismissal or whether dismissal is proper as a matter of law. *Fuller Family Holdings, LLC. v. Northern Trust Co.*, 371 Ill. App. 3d 605, 613 (2007). Section 2-619(a)(3) allows for dismissal of the action if "there is another action pending between the same parties for the same cause." 735 ILCS 5/2-619(a)(3) (West 2014). When ruling on a motion to dismiss, a reviewing court must construe the pleadings and supporting documents in the light most favorable to the nonmoving party and accept as true all well-pleaded facts in the complaint and all inferences that may reasonably be drawn in the plaintiff's favor. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. Disputed issues of fact are reserved for trial proceedings. *Advocate Health and Hospital Corp. v. Bank One, N.A.*, 348 Ill. App. 3d 755, 759 (2004). "Under section 2-619, the defendant admits to all well-pled facts in the complaint, as well as any reasonable inferences which may be drawn from those facts [Citation.], but asks the court to

conclude that there is no set of facts which would entitle the plaintiff to recover. As long as there is no genuine issue of material fact and the defendant is entitled to judgment as a matter of law, the complaint may be properly dismissed." *Advocate Health and Hospital Corp.*, 348 Ill. App. 3d at 759. The circuit court's decision to grant such a motion will be reviewed *de novo*. *Sandholm*, 2012 IL 111443, ¶ 55.

¶ 23 *Res judicata* is an equitable doctrine designed to encourage judicial economy by preventing a multiplicity of lawsuits between the same parties where the facts and issues are the same. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). The doctrine also "protects the parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia*, 209 Ill. 2d at 533.

¶ 24 "The doctrine of *res judicata* provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The essential elements of *res judicata* are: (1) a final judgment on the merits; (2) an identity of parties or their privies; and (3) an identity of causes of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008); *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d 985, 1000 (2005). "Moreover, the doctrine of *res judicata* applies not only to claims that have been fully litigated in an earlier proceeding, but also those that could have been raised or decided, but were not, thus barring such claims from relitigation at a later date." *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996) (*Res judicata* "extends not only to what was actually decided in the original action, but also to matters which could have been decided in that

suit."). In addition, the issue of whether a claim is barred by *res judicata* is an issue of law which mandates *de novo* review by this court. *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000.

¶ 25 Here, we find that the district court case and the State court case involved the same cause. Specifically, in Lisa's cross-claim for declaratory judgment filed in the district court, Lisa alleged that Cehovic failed to disclose that he procured the supplemental life insurance policy using marital funds and that he named Emma as the sole beneficiary. She alleged this fraud required the imposition of a constructive trust on the proceeds of the supplemental life insurance policy in order to provide for G.C. Emma, in response, argued that ERISA preempted Lisa's claims and required payment of the life insurance to the benefit designee. In the State case, by Lisa's amended petition to vacate the judgment of dissolution of marriage, she alleged that Cehovic failed to disclose the supplemental life insurance policy, acquired with marital funds, naming Emma as the sole beneficiary. Based on this fraud, Lisa claimed she should be awarded the proceeds from the supplemental life insurance policy in order to provide for the "benefit of the minor child." Emma, in response, argued that Lisa's claims were preempted by ERISA, which requires payment of life insurance proceeds to the designee.

¶ 26 Under the "transactional analysis" adopted by our supreme court in *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290 (1998), separate claims are considered the same cause of action and are barred by the doctrine of *res judicata* where they arise from a single group of operative facts, regardless of whether they assert different theories of relief. *River Park*, 184 Ill. 2d at 311. Claims may be considered part of the same cause of action "even if there is not a substantial overlap of evidence, so long as they arise from the same transaction." *River Park*, 184 Ill. 2d at 311. The *River Park* court explained that, in the transactional analysis, 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*, 184 Ill. 2d at 309, quoting Restatement (Second) of Judgments § 24, *Comment a*, at 197 (1982). Additionally, a "final judgment bars a plaintiff's claim to all or any part of a transaction or series of connected transactions from which the action arose." *Doe v. Gleicher*, 393 Ill. App. 3d 31, 37-8 (2009) (relying on *River Park*, 184 Ill. 2d at 309).

¶ 27 In our opinion, the two actions at issue here involved same cause, where both the district court and the circuit court cases arose out of the same group of operative facts, that is, that Cehovic designated Emma as the sole beneficiary of his ERISA-governed life insurance policies. The same arguments were made, *e.g.*, Lisa claimed the supplemental life insurance proceeds were hers because Cehovic procured the policy prior to the dissolution of marriage without disclosing said policy, and Emma claimed the proceeds were hers because they were governed by ERISA. Both cases arose out of the same group of operative facts and are considered here, for purposes of the doctrine of *res judicata*, to involve the same cause. See *River Park*, 184 Ill. 2d at 311.

¶ 28 Additionally, we find that the district court case and the State court case involved the same parties for purposes of analysis under the principles of *res judicata*. Although Lisa claims that the parties are not the same because Emma is the party named in the federal case and the Estate is the party to the State court case, that fact is not dispositive to our analysis. Rather, parties do not have to be identical for purposes of *res judicata*, but, instead, the "requirement [of identity of parties for purposes of *res judicata*] is met where the litigants' interests are

sufficiently similar, even though the litigants differ in name." *Schnitzer v. O'Connor*, 274 Ill. App. 3d 314, 318 (1995). In this case, Emma was the Special Administrator of the Estate, tasked with defending against Lisa's claim for the life insurance proceeds, which insurance policy specifically designated Emma as the sole beneficiary. In the State court, Emma was also defending against Lisa's claim for the life insurance proceeds that had been specifically designated for Emma. We find a sufficient identity of the parties for purposes of the doctrine of *res judicata*.

¶ 29 The resolution of the third *res judicata* requirement, however, is more complicated, and we find the outcome of this cause rests on this requirement. The parties disagree as to whether the district court case can act as a final judgment on the merits for purposes of *res judicata*. As noted above, the United States District Court for the Northern District of Illinois held that Emma was the proper beneficiary of the proceeds of the supplemental life insurance policy, that it properly had jurisdiction to hear the ERISA issues raised by the parties, and that Lisa's claims to the supplemental insurance benefits should be denied. *Dixneuf v. Wong*, 2016 WL 4366596. Lisa filed a motion to reconsider, which the district court denied. Lisa then filed a notice of appeal on March 10, 2017, in the United States Court of Appeals for the Seventh Judicial Circuit. This appeal is currently pending. Citing *Ballweg v. City of Springfield*, the Estate contends that, because it has filed an appeal of the federal case, the district court judgment is not "final" for purposes of *res judicata*. See *Ballweg*, 114 Ill. 2d 107, 113 (1986) (in context of the doctrine of collateral estoppel, our Supreme Court found that "finality requires that the potential for appellate review must have been exhausted"). We agree. The Second Division of this Court has discussed the potential difficulties of conflicting judgments:

> "[A] final judgment can serve as the basis to apply the doctrine of *res judicata* even though that judgment is being appealed. *Illinois Founders Insurance Co. v. Guidish*, 248 Ill. App. 3d 116, 120, 187 Ill. Dec. 845, 618 N.E.2d 436 (1993). However, when a party appeals the judgment in one case, it is possible that conflicting judgments can result by allowing the judgment in the first case to serve as the basis for *res judicata* in the second case because the judgment in the first case could be reversed on appeal. [*In re Estate of*] *Barth*, 339 Ill. App. 3d 651,] 668, 275 Ill. Dec. 84, 792 N.E.2d 315; *Illinois Founders Insurance Co.*, 248 Ill. App. 3d at 120-21, 187 Ill.Dec. 845, 618 N.E.2d 436. To avoid such a result, Illinois courts have recognized that it is appropriate to delay a decision in the second case pending the appeal of the first case. *Barth*, 339 Ill. App. 3d at 668, 275 Ill. Dec. 84, 792 N.E.2d 315; *Illinois Founders Insurance Co.*, 248 Ill. App. 3d at 121, 187 Ill.Dec. 845, 618 N.E.2d 436; *Wiseman v. Law Research Service, Inc.*, 133 Ill. App. 2d 790, 793, 270 N.E.2d 77 (1971)." *Kensington's Wine Auctioneers and Brokers, Inc. v. John Hart Fine Wine, Ltd.*, 392 Ill. App. 3d 1, 17 (2009).

¶ 30 Here, the circuit court considered and ruled upon the section 2-619 motion to dismiss the week after the district court issued its decision. No appeal had yet been filed in the federal case. At that time, the circuit court reviewed the district court's memorandum opinion and determined that it operated as *res judicata* to the issues at hand regarding the supplemental insurance policy. Then, Lisa filed a motion to reconsider in the district court, which that court denied. At that time, in March 2017, Lisa filed an appeal of the district court's opinion. It is this appeal that creates a potential problem for us in this cause. Were we to affirm the dismissal of Lisa's section 2-1401 petition based on the doctrine of *res judicata*, relying on the district court's opinion which is currently pending on appeal to the Seventh Circuit, the Seventh Circuit might then reverse the

judgment of the district court. This, of course, would create conflicting judgments, potentially leading to instability and confusion. This contravenes the underlying purpose of the doctrine of *res judicata*, which is to "protect[] the parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia*, 209 Ill. 2d at 533.

¶ 31 In the case at bar, the potential for appellate review has not been exhausted, as there is a currently-pending appeal in the Seventh Circuit. Accordingly, we find that dismissal on the basis of *res judicata* is improper at this time. For that same reason, we order the circuit court to stay the State court proceedings until such time as the potential for appellate review in the federal court has been exhausted. We recognize that " 'One should not be able to avoid the use (in a *res judicata* context) of a judgment against him by merely taking an appeal' " *Shaw v. Citizens State Bank of Shipman*, 185 Ill. App. 3d 79, 82 (1989) (quoting *Wiseman v. Law Research, Inc.* 133 Ill. App. 2d 790, 793 (1971)). Therefore, we remand with directions that the stay is subject to later reconsideration by the circuit court as to whether the appeal in the federal case is proceeding in a reasonably timely manner.

¶ 32 III. CONCLUSION

¶ 33 For all of the foregoing reasons, we reverse the decision of the circuit court and remand with directions that the circuit court stay these proceedings pending the outcome of the federal proceedings in the matter of *Dixneuf v. Wong*, 2016 WL 4366596, subject to later reconsideration by the circuit court regarding whether the appeal in the federal case is proceeding in a reasonably timely manner.

¶ 34 Reversed and remanded with directions.