

NOTICE

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FILED

August 1, 2017
Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160948-U

NO. 4-16-0948

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

LAUREN M. LaRUE,)	Appeal from
Petitioner-Appellant,)	Circuit Court of
v.)	Adams County
BENTON L. KING III,)	No. 16OP302
Respondent-Appellee.)	
)	Honorable
)	Charles H.W. Burch,
)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Appleton concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court reversed the trial court’s judgment granting respondent’s motion for a directed finding on the basis of *res judicata*.

¶ 2 In July 2016, petitioner, Lauren M. LaRue, filed a verified petition for an order of protection against respondent, Benton L. King III. At a hearing in October 2016, the trial court granted respondent’s motion for a directed finding.

¶ 3 On appeal, petitioner argues the trial court erred in dismissing her verified petition for an order of protection. We reverse and remand for further proceedings.

¶ 4 I. BACKGROUND

¶ 5 On December 9, 2015, petitioner filed a verified petition for an order of protection against respondent in case No. 15-OP-435. Therein, she stated respondent came into her house, tried to suffocate her, smacked her, and choked her. Petitioner stated respondent’s violent

behavior had been ongoing for six years. That same day, the trial court entered an emergency order of protection.

¶ 6 On December 16, 2015, the trial court entered an order following a hearing on the emergency order of protection. The order indicated petitioner appeared, and respondent appeared with his attorney. The court ordered the order of protection to continue in full force and effect until January 6, 2016.

¶ 7 On January 6, 2016, the trial court entered an order following a hearing on the emergency order of protection. The order indicated petitioner did not appear, and respondent appeared with counsel. The court terminated/dismissed the order of protection, noting in the order that petitioner had contacted respondent's attorney stating her intention to dismiss the matter.

¶ 8 On July 7, 2016, petitioner filed a verified petition for an order of protection against respondent in case No. 16-OP-302. Therein, she sought an order of protection because respondent was "getting out of prison shortly." She stated she previously dropped an order of protection against respondent because he was in jail. That same day, the trial court entered an emergency order of protection.

¶ 9 On September 19, 2016, the trial court conducted a hearing on the petition for a plenary order of protection. Petitioner testified there was a specific incident in December 2015 that precipitated her request for an order of protection. Respondent's counsel objected on the grounds of *res judicata*, since the subject of the previous order of protection had been dismissed by petitioner. The court reserved ruling on the objection.

¶ 10 Petitioner stated the December 2015 incident occurred at her house. Respondent dropped off their son at day care and came over to her house. Once inside, respondent came

upstairs yelling and screaming at petitioner and wanting to know with whom she was sleeping. Petitioner stated he choked her and tried to suffocate her. Respondent eventually left when petitioner said she called the police. Petitioner stated she felt afraid and unsafe. Petitioner obtained an order of protection but dismissed it because she wanted respondent to see his son.

¶ 11 Petitioner also testified to an incident in 2012 or 2013 in Missouri when respondent accused her of cheating on him. While she attempted to call her mother, respondent got out his guns and said he was going to kill her. They both left before the police arrived. They returned and went to bed. The police then arrived and took respondent to jail. He was later charged with unlawful use of a weapon.

¶ 12 On cross-examination, petitioner testified she moved to dismiss the December 2015 order of protection. Petitioner stated the allegations made at that time were the same as those at the current hearing. She stated nothing had occurred since the dismissal because respondent had been in prison and on probation with an ankle monitor. She also stated respondent had not contacted her. Petitioner testified she wanted the order of protection because she did not want respondent to see their son, as she takes care of him and wants to be safe.

¶ 13 Quincy police officer Chris Mueller testified he responded to a disturbance on December 9, 2015. He observed petitioner with “red marks on her neck.” She told him respondent had shoved a pillow over her face and slapped her.

¶ 14 Pike County, Missouri, police detective Joseph Minor testified regarding a domestic assault call on June 27, 2013, in Clarksville, Missouri. He entered a residence and eventually secured respondent in wrist restraints. Minor stated he found a gun that was “difficult to unload because the wrong ammunition was in the gun.” He spoke with respondent, who stated he was “blacked out drunk” and acknowledged he could have inflicted serious physical injury by

brandishing or displaying the weapon in a threatening manner.

¶ 15 Becky LaRue, petitioner's mother, testified to an incident in 2013 where she received a voicemail in which petitioner was "screaming and crying and begging for him not to shoot her." After the incident, petitioner and respondent started living together again.

¶ 16 Respondent testified as an adverse witness. He stated he was convicted of unlawful use of a firearm based on the 2013 incident in Missouri and was sentenced to supervised probation. As to the 2015 incident, respondent invoked his right against self-incrimination since the case was pending.

¶ 17 At the conclusion of petitioner's case, respondent's counsel made a motion for a directed finding. Counsel argued the order of protection in case No. 15-OP-435 was dismissed in January 2016, the facts were the same as in this case, and respondent had no contact with petitioner since that time. Counsel asked for the current petition to be dismissed based on the doctrine of *res judicata*.

¶ 18 The trial court found an identity of the parties and an identity of the causes of action. The court also found petitioner's voluntary dismissal of case No. 15-OP-435 amounted to a final judgment on the merits. Concluding the current case was barred by the doctrine of *res judicata*, the court granted the motion for a directed finding and dismissed the petition for an order of protection.

¶ 19 In November 2016, petitioner filed a motion to reconsider. Petitioner argued the voluntary dismissal of case No. 15-OP-435 was without prejudice, thereby allowing her to refile the case. Following arguments, the trial court denied the motion to reconsider. This appeal followed.

¶ 20

II. ANALYSIS

¶ 21

A. Lack of an Appellee's Brief

¶ 22 Initially, we note respondent has not filed a brief in this case. A reviewing court is not compelled to serve as an advocate for the appellee and is not required to search the record for the purpose of sustaining the trial court's judgment. However, if the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court should decide the merits of the appeal. On the other hand, if the appellant's brief demonstrates *prima facie* reversible error and the contentions in the brief find support in the record, the trial court's judgment may be reversed. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133, 345 N.E.2d 493, 495 (1976).

¶ 23

B. *Res Judicata*

¶ 24 Petitioner argues the trial court erred in dismissing her verified petition for an order of protection based on the doctrine of *res judicata*. We agree.

¶ 25 “The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action.” *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467, 889 N.E.2d 210, 213 (2008) (quoting *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199, 1204 (1996)). “The underlying policy of *res judicata* is to promote judicial economy by preventing repetitive litigation and to protect a defendant from the harassment of relitigating essentially the same claim.” *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 21, 53 N.E.3d 1.

¶ 26 “Three requirements must be satisfied for *res judicata* to apply: (1) a final judgment on the merits has been rendered by a court of competent jurisdiction; (2) an identity of cause of action exists; and (3) the parties or their privies are identical in both actions.” *Hudson*,

228 Ill. 2d at 467, 889 N.E.2d at 213. “ ‘If the same facts are essential to the maintenance of both proceedings or the same evidence is needed to sustain both, then there is identity between the allegedly different causes of action asserted and *res judicata* bars the latter action.’ [Citation.]” *People ex rel. Burris v. Progressive Land Developers, Inc.*, 151 Ill. 2d 285, 295, 602 N.E.2d 820, 825 (1992). “*Res judicata* bars not only what was actually decided in the first action but also whatever could have been decided.” *Hudson*, 228 Ill. 2d at 467, 889 N.E.2d at 213. Whether a claim is barred under the doctrine of *res judicata* is a question of law, which we review *de novo*. *Arvia v. Madigan*, 209 Ill. 2d 520, 526, 809 N.E.2d 88, 93 (2004).

¶ 27 In the case *sub judice*, the parties agreed at the hearing on the petition, and the trial court found, that an identity of the parties and an identity of causes of action existed between the current case and the former proceeding in case No. 15-OP-435. Thus, the issue on appeal centers on whether the trial court entered a final judgment on the merits in case No. 15-OP-435.

¶ 28 “The requirement of a final order or judgment is a ‘critical’ component in showing the applicability of *res judicata*. [Citation.] A judgment cannot bar a subsequent action unless it is a ‘final’ judgment.” *Richter*, 2016 IL 119518, ¶ 22, 53 N.E.3d 1. “To be ‘final,’ a judgment or order must terminate the litigation and fix absolutely the parties’ rights, leaving only enforcement of the judgment.” *Richter*, 2016 IL 119518, ¶ 24, 53 N.E.3d 1. “The party invoking *res judicata* carries the burden of establishing its applicability.” *Richter*, 2016 IL 119518, ¶ 22, 53 N.E.3d 1; see also *BankFinancial, FSB v. Tandon*, 2013 IL App (1st) 113152, ¶ 19, 989 N.E.2d 205 (stating a party asserting *res judicata* “bears the burden of showing with clarity and certainty what was determined by the prior judgment”).

¶ 29 In case No. 15-OP-435, petitioner filed a verified petition for an order of

protection on December 9, 2015, and the trial court entered an emergency order of protection. On January 6, 2016, the court dismissed the order of protection, noting it was “by agreement” of the parties. The order does not indicate whether the dismissal was with or without prejudice.

¶ 30 We find there was no final order entered in case No. 15-OP-435 following the voluntary dismissal. See 735 ILCS 5/2-1009(a) (West 2016) (stating a plaintiff may voluntarily dismiss an action without prejudice any time before the beginning of the trial or hearing); cf. Ill. S. Ct. R. 273 (eff. Jan. 1, 2006) (stating an *involuntary* dismissal operates as an adjudication on the merits unless otherwise stated). The trial court noted the case “never proceeded to a contested hearing.” Thus, the merits of the petitioner’s case were never decided, and no final judgment existed for the court to enforce.

¶ 31 A trial court’s final judgment in a civil case is appealable as of right (Ill. S. Ct. R. 301 (eff. Feb. 1, 1994)), but the parties here would have had nothing to appeal following the agreed dismissal of the 2015 action. While *res judicata* extends to what was actually decided in a prior action and what could have been decided in that case, nothing was decided in the December 2015 petition. Accordingly, as no final order on the merits existed, the court erred in dismissing case No. 16-OP-302 on the basis of *res judicata*. See *Richter*, 2016 IL 119518, ¶ 40, 53 N.E.3d 1 (noting “[a] nonfinal order cannot bar a subsequent action”).

¶ 32 III. CONCLUSION

¶ 33 For the reasons stated, we reverse the trial court’s judgment and remand for further proceedings.

¶ 34 Reversed and remanded for further proceedings.