

No. 1-18-1755

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

GLORIA JEAN SYKES,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellant,)	Cook County.
)	
v.)	No. 17 L 8682
)	
CAROLYN TOERPE,)	Honorable
)	James E. Snyder,
Defendant-Appellee.)	Judge Presiding.

JUSTICE CUNNINGHAM delivered the judgment of the court.
Presiding Justice Mikva and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in granting the defendant’s motion to dismiss and finding that the plaintiff’s action was barred by *res judicata*.

¶ 2 The circuit court of Cook County dismissed a complaint by the plaintiff-appellant, Gloria Jean Sykes (Gloria), against the defendant-appellee, Carolyn Toerpe (Carolyn), on the basis that *res judicata* barred the action. Gloria now appeals. For the following reasons, we affirm the judgment of the circuit court of Cook County.

¶ 3

BACKGROUND

¶ 4

The Trust

¶ 5 Gloria and Carolyn are sisters. In 2005, Gloria and Carolyn's mother, Mary Sykes (Mary), executed a "Declaration of Trust" (the trust). The trust named Mary as both the trustor and the trustee, and named Carolyn as the successor trustee "in the event [Mary] fails or ceases to act as trustee." The trust stated:

"The trustor shall be considered to be unable to manage her affairs if she is under a legal disability or by reason of illness or mental or physical disability [is] unable to give prompt and intelligent consideration to financial matters, and the determination as to trustor's inability at any time shall be made by her personal physician."

¶ 6 The trust left Mary's property, located at 6014 N. Avondale Avenue, Chicago, Illinois (the property), to Carolyn following Mary's death. Any remaining trust assets were to be distributed between Gloria and Carolyn equally.

¶ 7

Prior Proceedings

¶ 8 In 2009, Carolyn filed a petition for guardianship over Mary and her estate on the basis that Mary had dementia. Carolyn attached Mary's medical records to the petition. However, Mary's personal physician, Dr. Patel, stated that she was "unable to [un]equivocally say whether [Mary] is competent or not" and that "for further evaluation of her competency level, it would need the expertise of a psychologist."

¶ 9 On October 23, 2009, following a hearing, the trial court granted Carolyn's petition (the guardianship order). The court declared Mary to be a disabled adult and appointed Carolyn as guardian over Mary and her estate.

¶ 10 On April 3, 2013, Carolyn sold the property. Following the sale of the property, Gloria filed a four-count complaint against Carolyn. Gloria's complaint sought injunctive relief, including enjoining Carolyn from any further acts as successor trustee and declaring Gloria's superior right to the property.

¶ 11 Carolyn filed a motion to dismiss pursuant to section 2-619(a)(3) of the Code of Civil Procedure (the Code) (735 ILCS 5/2-619 (West 2012)), alleging that another action was pending between the same parties for the same cause. The motion to dismiss is not in the record on appeal, but the record reflects that the motion was referring to the ongoing probate proceedings.¹

¶ 12 On February 4, 2014, the trial court entered an order granting Carolyn's motion and dismissing Gloria's complaint. In its ruling, the trial court stated:

“Gloria's participation in the probate *** proceedings demonstrates that she is in fact an active and interested party [in those cases.] In this case, review of the complaint filed in this case[,] coupled with review of the orders from the probate [court], *** establish that Gloria is asking this court to review and disregard orders of another circuit court judge. *** The relief requested in the instant action is yet another attempt to alter the outcome at issue in the probate *** proceedings.”

¹The record reflects that Gloria and Carolyn have engaged in numerous lawsuits with each other in various courts, including in federal court, but the cases outside of the probate proceedings are not relevant to this appeal.

¶ 13 On May 23, 2015, Mary passed away. Carolyn, as the guardian, submitted a Fifth and Final Accounting of Mary's estate to the court. On August 6, 2015, the trial court entered an order approving the Fifth and Final Accounting (the probate order). The probate order also stated that Carolyn "is hereby discharged as plenary guardian of the estate and person of [Mary] and this case is closed."

¶ 14 The Instant Case

¶ 15 On August 28, 2017, Gloria filed the complaint in the instant case.² Her two-count complaint against Carolyn alleged: (1) Intentional Violation of the Trust Agreement; and (2) Fraud. In her complaint, Gloria alleged that Carolyn violated the terms of the trust when she sold the property prior to Mary's death and when she did not distribute half of the proceeds from the sale to Gloria. Gloria also alleged that Carolyn committed fraud when she acted as successor trustee without a determination by Mary's personal physician that Mary was unable to act as trustee. The complaint sought \$238,000 in damages and attorney's fees.

¶ 16 In response, Carolyn filed a motion to dismiss pursuant to section 2-619(a)(4) of the Code (735 ILCS 5/2-619(a)(4) (West 2016)). In her motion, Carolyn argued that *res judicata* barred Gloria's complaint. Specifically, Carolyn claimed that the guardianship and probate orders already disposed of the issues raised by Gloria, *i.e.*, Mary's legal competence, the sale of the property, and Carolyn's guardianship appointment. Carolyn argued that Gloria's complaint was filed "to resurrect matters that were or should have been brought" in the probate proceedings.

²Although Gloria is represented by counsel on appeal, she filed her complaint in the instant case *pro se*.

¶ 17 Following a hearing, the trial court granted Carolyn’s motion and dismissed Gloria’s complaint with prejudice. The court stated:

“[The court] believes that *res judicata* *** applies, that when the orders from all of those other courts *** are challenged and affirmed they become final orders, which in fact triggers *res judicata*[.] *** [T]his court does believe that dismissal is warranted pursuant to section 2-619 *** based upon *res judicata*.”

This appeal followed.

¶ 18 ANALYSIS

¶ 19 We note that we have jurisdiction to consider this matter, as Gloria filed a timely notice of appeal. Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. July 1, 2017).

¶ 20 Gloria presents the following sole issue: whether the trial court erred in dismissing her complaint on the basis of *res judicata*. Gloria argues that *res judicata* does not bar her complaint because the causes of action differ from the probate proceedings. Specifically, Gloria claims that her “right to relief under her two-count complaint did not arise until after Mary’s death and well after the prior actions were adjudicated.” She argues that her complaint in the instant case involves her rights as a beneficiary under the trust, and is not related to the probate proceedings. Gloria also argues that she is now seeking monetary damages, whereas she previously sought injunctive relief, so *res judicata* cannot apply. Additionally, Gloria claims that the probate court did not have jurisdiction to hear matters related to the trust.³

¶ 21 A motion to dismiss pursuant to section 2-619 admits the legal sufficiency of the pleadings, but asserts certain defects or defenses. *Duncan v. FedEx Office & Print Services, Inc.*,

³Carolyn did not file a response brief, and so we have taken this case on Gloria’s brief only.

2019 IL App (1st) 180857, ¶ 10. Carolyn's motion to dismiss in this case was based upon *res judicata*. *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. *Venturella v. Dreyfuss*, 2017 IL App (1st) 160565, ¶ 26. The doctrine protects parties from being forced to bear the unjust burden of relitigating essentially the same case. *Id.* *Res judicata* applies not only to claims that have been fully litigated in an earlier proceeding, but also to claims that could have been raised or decided, but were not. *Id.*, ¶ 27. The 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. *Id.* We review a trial court's order dismissing a complaint under section 2-619 *de novo*. *Duncan*, 2019 IL App (1st) 180857, ¶ 10.

¶ 22 The crux of Gloria's argument is that the third element of *res judicata* does not exist in this case, that there is not an identity of causes of action. We are not persuaded by her argument. Although Gloria claims that her causes of action are related to *the trust*, they are in fact related to Carolyn's guardianship appointment and Carolyn selling the property. And those issues were resolved in the guardianship and probate orders.

¶ 23 The trial court in the probate proceedings was aware that Mary's personal physician did not determine Mary to be incompetent, but it considered all of the other factors and declared Mary to be a disabled adult. Therefore, the appropriate time to have challenged Mary's incompetence was during the probate proceedings when Carolyn was seeking guardianship. Indeed, the record reflects that Gloria did object to the guardianship appointment during the probate proceedings on the basis that Mary's personal physician had not determined her to be incompetent. Gloria cannot now take more than one bite out of the same apple and continue to

repeat the same, unsuccessful argument. See *Hayes v. State Teacher Certification Board*, 359 Ill. App. 3d 1153, 1161 (2005).

¶ 24 The same is true for Gloria's argument regarding Carolyn selling the property. Carolyn was acting within her rights and duties as guardian of Mary's estate when she sold the property. Thus, Gloria's challenge to Carolyn selling the property is actually a challenge to *Carolyn's guardianship appointment*. And as discussed, the issue of Carolyn's guardianship appointment was resolved in the guardianship order. It is clear that Gloria is merely attempting to alter the outcome of the probate proceedings.

¶ 25 We also reject Gloria's argument that she could not have brought this action until after Mary's death. The causes of action in her complaint explicitly relate to Carolyn's guardianship appointment and to Carolyn selling the property, both of which occurred *prior to Mary's death*. Mary's death had no effect on those issues.

¶ 26 Further, it is immaterial that Gloria previously sought injunctive relief and now seeks monetary damages. Relief is irrelevant for the purposes of *res judicata*. See *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 307 (1998) (the assertion of different kinds of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief).

¶ 27 In sum, Gloria's causes of action in her complaint all relate to issues surrounding Carolyn's guardianship appointment and Mary's estate, and those issues were resolved in the probate proceedings. Therefore, there is an identity of causes of action and *res judicata* bars Gloria's action in this case.

¶ 28 As a final matter, Gloria argues that the trial court in the probate proceedings did not have jurisdiction to hear matters related to the trust. Gloria also claims that the trial court lost

jurisdiction over the case after Mary died, as “once a disabled person dies, the guardianship terminates and the court supervising the estate loses jurisdiction to adjudicate a claim filed against the estate.” This is a frivolous argument. First, as discussed, the trial court in the probate proceedings did not hear matters related to the trust. The trial court strictly heard matters related to Mary’s estate and Carolyn’s guardianship appointment. Second, Carolyn was appointed guardian over Mary *and her estate*. Even after Mary died, the trial court retained jurisdiction to resolve the estate matters. Indeed, the purpose of probate is to ensure that all claims relating to the administration of estates are handled in the probate proceedings, thereby providing a single forum for settling the rights of the parties. *Estate of Jeziorski*, 162 Ill. App. 3d 1057, 1062 (1987). Thus, we reject this argument.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.