

RECORD IMPOUNDED

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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R.1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1185-13T1
A-2102-14T2

R.S.

Plaintiff-Appellant,

v.

S.C.

Defendant-Respondent,

and

W.S.

Defendant.

R.S.,

Plaintiff-Respondent,

v.

S.C.,

Defendant-Respondent,

and

W.S.

Defendant-Appellant.

Argued January 26, 2017 – Decided March 8, 2017

Before Judges Hoffman, O'Connor and Whipple.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Camden County,
Docket No. FD-04-0186-14.

R.S., appellant in A-1185-13 and respondent
in A-2102-14, argued the cause pro se.

W.S., appellant pro se in A-2102-14.

Kenneth L. Winters argued the cause for
respondent S.C. (Jardim Meisner & Susser,
P.C., and Law Offices of Michael E. Fingerman,
P.C., attorneys; Mr. Winters and Lise A.
Fisher, on the brief).

PER CURIAM

In these back-to-back appeals, which we consolidate for purposes of this opinion, plaintiff R.S. appeals from a September 11, 2013 Family Part order denying his request for genetic testing. His mother, W.S., appeals from a November 17, 2014 order denying her motion to vacate the September 11, 2013 order. We affirm both orders for the reasons that follow.

The matter has a complicated litigation history, which began in Pennsylvania. Plaintiff was born in July 1993. The Pennsylvania Court of Common Pleas in Dauphin County entered a support order against R.G., as the putative father, for the support of plaintiff. Although it is unclear from the record, at some point plaintiff's mother gave L.C., a relative caretaker, power

of attorney over all of plaintiff's legal, financial, and health matters.¹

Believing defendant S.C. was plaintiff's true biological father, the mother filed two motions in the Family Division of the Pennsylvania Court of Commons Pleas Philadelphia County in June 2010. The mother sought to compel genetic testing of S.C. and R.G. On July 16, 2010, the Pennsylvania court dismissed the application because neither S.C. nor R.G. were served. Moreover, the order stated "[a]s a matter of law, the motion must be denied because Mother cannot wait seventeen years to name a second person as the father of her child when she identified another person as the father sixteen years ago and never attempted to recant that identification until now." The mother did not appeal the Pennsylvania order.

On March 28, 2011, plaintiff's mother filed a second petition to compel S.C. to submit to paternity testing. On May 19, 2011, the Philadelphia County court dismissed the mother's petition applying res judicata because the July 16, 2010 order previously disposed of the issue.

On July 23, 2011, L.C. filed a petition for paternity against S.C., seeking an award of custody of plaintiff, then a minor, in

¹ L.C. has also filed an appeal; her arguments are addressed in a separate opinion.

the Superior Court of New Jersey, Atlantic County, Family Part. The Family Part Atlantic County judge awarded custody to L.C. but dismissed the paternity claim because the Pennsylvania courts retained jurisdiction over the paternity issue.

At some point, a Pennsylvania court vacated the prior paternity order establishing R.G. as plaintiff's father. Therefore, plaintiff's mother moved to vacate the Pennsylvania orders of July 16, 2010, and May 19, 2011. On June 14, 2012, the court agreed, finding extraordinary cause existed to warrant opening the judgment. S.C. appealed, and on April 23, 2013, the Superior Court of Pennsylvania reversed, effectively reinstating the prior orders denying paternity testing. The April 23, 2013 order was the final order in Pennsylvania and was not appealed.

On July 10, 2013, plaintiff, now an adult, filed a complaint in the Superior Court of New Jersey in Camden County, seeking to compel S.C.'s genetic testing under the New Jersey Uniform Parentage Act, N.J.S.A. 9:17-38 to -59, "for emotional, health history and inheritance reasons." S.C. filed a counterclaim on August 15, 2013, and moved to dismiss plaintiff's complaint as res judicata and for lack of jurisdiction.

On September 11, 2013, the trial judge denied plaintiff's request for paternity testing, affording full faith and credit to the Pennsylvania orders and adding the parties cannot forum shop.

The trial judge also relied upon the Atlantic County Family Part order dismissing a similar petition because Pennsylvania had jurisdiction over the matter. Plaintiff's appeal followed.

On September 27, 2013, plaintiff moved to correct the September 11, 2013 order, which listed his mother as a plaintiff when she was originally listed as a defendant.² Plaintiff's mother did not enter an appearance other than to submit a certified statement to the trial judge asserting S.C.'s lawyers engaged in fraud and deception. Plaintiff's mother subsequently filed an untimely motion for relief from the September 11, 2013 judgment, arguing S.C.'s lawyers fraudulently misrepresented S.C.'s minimum contacts with New Jersey and sought release from the September 11, 2013 judgment. Plaintiff's mother asserted she was unaware of the order and her health complications affected her ability to submit a timely motion. On November 17, 2014, the motion judge denied the mother's motion to vacate. Her appeal followed.

² There is nothing in the record indicating the order was ever corrected, nor have we been presented with a reason to correct the order on appeal. In the September 11, 2013 order caption, the mother was named as a plaintiff when the complaint originally designated her as a defendant. The mother argues this error resulted in her inability to appeal the decision but has not demonstrated any prejudice. The error is not relevant to our discussion as any re-designation would not provide the mother any additional relief.

On appeal, plaintiff raises a number of individual arguments, which generally fall into two categories: 1) the Pennsylvania orders do not foreclose his claim to ascertain whether S.C. is his biological father and 2) S.C. and his lawyers fraudulently misrepresented his capacity to be sued in New Jersey. Plaintiff's mother repeats her son's assertions of fraud and argues the court erred treating her as a plaintiff. We address their arguments in turn.

We will "not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Inv'rs Ins. Co., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

I.

Plaintiff argues the Pennsylvania orders do not prohibit suit in New Jersey because plaintiff was not a party to the actions in Pennsylvania. We disagree.

Plaintiff was a minor at the time his mother brought an unsuccessful paternity action on his behalf, and he is subject to the final order in Pennsylvania. The April 23, 2013 final order

denying the request to compel S.C.'s genetic testing is entitled to full faith and credit by the New Jersey court system.

New Jersey recognizes judicial decisions of sister states. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, §1. The only time this State shall not provide recognition to a sister state's judgment is if there is a due process violation. Sonntag Reporting Serv., Ltd. v. Ciccarelli, 374 N.J. Super. 533, 537 (App. Div. 2005). A due process violation is present if "the rendering state 1) lacked personal jurisdiction over the judgment debtor, 2) lacked subject matter jurisdiction, [or] 3) failed to provide the judgment debtor adequate notice and an opportunity to be heard." Id. at 538 (quoting Choi v. Kim, 50 F.3d 244, 248 (3d Cir. 1995)). The Camden County Family Part judge specifically ruled the two final Pennsylvania orders, dated July 16, 2010 and May 19, 2011, were binding on the New Jersey court, as well as the Atlantic County order that determined Pennsylvania had jurisdiction.

Plaintiff's arguments regarding his minor status at the time are unavailing. In E.I.B. by I.J. v. J.R.B., we said an unsuccessful paternity action brought on E.I.B.'s behalf by her mother preceding the enactment of the New Jersey Uniform Parentage Act, N.J.S.A. 9:17-38 to -59, "made the same allegations, sought

essentially the same relief and was actually litigated through trial and an appeal." 259 N.J. Super. 99, 108-109 (App. Div. 1992). We were satisfied the prior paternity action "was the functional equivalent of and involved the same legal right" as a subsequent proceeding and noted E.I.B.'s action was bound by the result under the doctrine of collateral estoppel. Id. at 103, 109. Moreover, in Pennsylvania, an action for paternity must be initiated before the child reaches the age of eighteen. 23 Pa. Cons. Stat. §4343(b)(1) (1997).³ Applying the same principals, we are satisfied plaintiff's mother's action on his behalf binds him.

Principals of judicial comity and claim and issue preclusion also require dismissal of the complaint. Judicial comity applies if "(1) there is a first-filed action in another state, (2) both cases involve the same parties, the same claims, and the same legal issues, and (3) the plaintiff will have the opportunity for adequate relief in the prior jurisdiction." Bass ex rel. Will of Bass v. DeVink, 336 N.J. Super. 450, 456 (App. Div. 2001). Plaintiff's complaint sought the same relief as the previously filed petitions in Pennsylvania, involving the same parties, the

³ Plaintiff correctly points out the New Jersey Parentage Act permits suit up until age twenty-three. However, the increased window in New Jersey does not provide him with a second opportunity to re-litigate the unsuccessful paternity claim his mother brought in Pennsylvania.

same claim, the same legal issue, and the parties had an opportunity for adequate relief.

Claim preclusion, or res judicata, requires dismissal because the judgment in the prior action was "valid, final, and on the merits"; the parties are in privity with those in the prior action; and the claim involved the same transaction or occurrence as the claim in Pennsylvania. See McNeil v. Legislative Apportionment Comm'n, 177 N.J. 364, 395 (2003) (quoting Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 412 (1991)). Plaintiff's claim had already been adjudicated in Pennsylvania, as well as in Atlantic County, involving the same parties or those in privity, and all of these claims arose from the alleged paternity of plaintiff by S.C.

Issue preclusion, or collateral estoppel, bars plaintiff's complaint because the issue of plaintiff's claim against S.C. to establish paternity was decided in Pennsylvania. Issue preclusion bars an action if the following circumstances are met:

- (1) the issue to be precluded is identical to the issue decided in the first proceeding;
- (2) the issue was actually litigated in the prior action, that is, there was a full and fair opportunity to litigate the issue in the prior proceeding;
- (3) a final judgment on the merits was issued in the prior proceeding;
- (4) determination of the issue was essential to the prior judgment; and
- (5) the party against whom issue preclusion is asserted was a party

to or in privity with a party to the prior proceeding

[Pace v. Kuchinsky, 347 N.J. Super. 202, 215 (App. Div. 2002).]

As noted above, this action involved the same parties, there was a final judgment on the merits that was litigated, and both actions involve an identical issue.

For all these reasons, the parties in the present action are bound by the Pennsylvania orders because they involve the same parties, the same issue, and a final judgment has already been reached.

II.

As an alternate way forward, plaintiff argues N.J.S.A. 9:17-45 provides New Jersey with subject matter jurisdiction simply because he is a resident in the State. Subsection (c) allows a paternity action to be instituted or commenced against the estate or legal representative of an alleged father if that father has died. There is no statutory language in this statute that applies subject matter jurisdiction to an action under the statute by being a resident in New Jersey. The New Jersey Parentage Act (Act), N.J.S.A. 9:17-38 to -59, does not provide plaintiff the subject matter or personal jurisdiction he needs in order to bring suit against S.C. Moreover, it does not provide plaintiff a way around the preclusion of his claims.

We also reject plaintiff's argument the trial court should have considered his request to have one of S.C.'s family members submit to genetic testing under N.J.S.A. 9:17-38 to -59.

III.

We turn to plaintiff's and his mother's assertions of fraud upon the court by S.C. and his lawyers.⁴ They provide no material evidence to substantiate such claims.⁵ Plaintiff and his mother assert S.C. owns property in New Jersey and is lying to the court about his subjectivity to suit. To establish a claim of common law fraud, a plaintiff must establish that there was "(1) a material misrepresentation of a presently existing or past fact; (2) knowledge or belief by the defendant of its falsity; (3) an intention that the other person rely on it; (4) reasonable reliance thereon by the other person; and (5) resulting damages." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 610 (1997) (citing Jewish Ctr. of Sussex Cty. v. Whale, 86 N.J. 619, 624-25 (1981)).

⁴ The mother alleges possible collusion between L.C. and S.C.'s Pennsylvania counsel. This claim is unsupported by the record nor is it relevant to the assertion New Jersey courts were misled.

⁵ At a December 14, 2012 hearing, S.C.'s counsel stated she "misspoke" at an earlier hearing when she stated the New York address listed in a pleading was S.C.'s home address when it was in fact his work address, but counsel reiterated that S.C. lives in New York.

Plaintiff and his mother offer no examples of misrepresentations or false statements. Plaintiff offers unsupported assertions about S.C.'s status and residence in New Jersey. However, even if S.C. were to concede jurisdiction, plaintiff would not be entitled to relief for the reasons discussed above.

IV.

Plaintiff's remaining arguments address issues not raised to the trial court. This court will not consider issues on appeal not raised before the trial judge other than issues related to jurisdiction of the trial court or concerning substantial public interest. Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234 (1973).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION