

SUPREME JUDICIAL COURT OF MAINE

Pat Doe v. Mark Forino

2020 ME 135 (2020) · No. Aro-20-128 · Decided December 15, 2020

SUMMARY

The Maine Supreme Judicial Court affirmed a protection-from-abuse order entered in favor of two children against Mark Forino. The court held that claim preclusion did not bar the second protection-from-abuse complaint because the children were excluded from the first final order and were not in privity with the parties to that proceeding. The court also declined to address an inadequately developed issue-preclusion argument and emphasized caution in applying res judicata in cases involving children.

CASE DETAILS

COURT	Supreme Judicial Court of Maine
WRITING FOR THE COURT	Horton, J.; Mead, J.; Gorman, J.; Jabar, J.; Humphrey, J.; Connors, J.
JURISDICTION	Maine
DECIDED	December 15, 2020
DOCKET	Aro-20-128
DISPOSITION	affirmed
PROCEDURAL POSTURE	Forino appealed a District Court judgment entering a protection from abuse order in favor of Doe's two younger children. He challenged the denial of his motions to dismiss on claim-preclusion grounds and to exclude evidence concerning Doe's earlier protection-from-abuse complaint.
STANDARD OF REVIEW	The res judicata determination was reviewed de novo. The District Court's finding concerning party identity or privity was reviewed for clear error. The court also applied waiver principles to the inadequately developed issue-preclusion argument.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Mark Forino v. Pat Doe, the two younger children

TOPICS

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res judicata

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether claim preclusion barred Doe's second protection-from-abuse complaint because it involved the same alleged incident as the first complaint.
2. Whether the two younger children were parties to, or in privity with parties to, the first action such that claim preclusion applied.
3. Whether Forino's inadequately developed issue-preclusion argument required exclusion of evidence concerning allegations in the first complaint.

HOLDINGS

1. Claim preclusion did not bar the second complaint because the two younger children were not parties to the first final judgment and were not in privity with Doe or the oldest child.
2. The court did not reach the issue-preclusion argument because it was functionally duplicative of the claim-preclusion argument and was inadequately developed for appellate review.

KEY QUOTATIONS

“Claim preclusion bars relitigation if: (1) the same parties or their privies are involved in both actions; (2) a valid final judgment was entered in the prior action; and (3) the matters presented for decision in the second action were, or might have been, litigated in the first action.” (¶ 8)

“Privity requires that the parties’ interests in the first litigation be so intertwined as to “represent one single legal right.”” (¶ 11)

“Given frequently changing family circumstances and the summary nature of the procedure on complaints for protection from abuse, the need for caution in applying res judicata is as compelling in cases regarding protection from abuse as it is in divorce, child protective, and other case types in which the care and custody of children is determined.” (¶ 15)

FACTUAL BACKGROUND

Doe's first complaint alleged an April 20, 2019 incident and sought protection for herself and three children. The parties agreed to an order without a finding of abuse, but the final order protected only Doe and her oldest child; the two younger children were excluded, and no adjudication was made concerning whether they had been abused. After criminal-case bail conditions were amended to permit Forino contact with the younger children, Doe filed a second complaint on their behalf based on the same alleged incident. The District Court found both children abused and entered a protection-from-abuse order.

PROCEDURAL HISTORY

Doe's first protection-from-abuse complaint, filed on behalf of herself and three children, resulted in an agreed final order protecting Doe and her oldest child but not the two younger children. After bail conditions changed to

permit Forino contact with the younger children, Doe filed a second complaint on their behalf based on the same alleged incident. The District Court denied Forino's motions to dismiss and in limine, entered a protection-from-abuse order after hearing, and affirmed its ruling in amended and subsequent orders. The Supreme Judicial Court of Maine affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Children of Bethmarie R., 2018 ME 96, ¶ 15, 189 A.3d 252
- Macomber v. MacQuinn-Tweedie, 2003 ME 121, ¶ 22, 834 A.2d 131
- Fiduciary Trust Co. v. Wheeler, 2016 ME 26, ¶ 14, 132 A.3d 1178
- Mehlhorn v. Derby, 2006 ME 110, ¶ 11, 905 A.2d 290
- State v. Chan, 2020 ME 91, ¶ 13, 236 A.3d 471
- In re M.M., 2014 ME 15, ¶¶ 16, 18, 86 A.3d 622
- Beal v. Allstate Ins. Co., 2010 ME 20, ¶ 20, 989 A.2d 733
- Department of Human Services ex rel. Boulanger v. Comeau, 663 A.2d 46, 48 (Me. 1995)
- Guziejka v. Desgranges, 571 A.2d 32, 34 (R.I. 1990)
- In re Children of Melissa F., 2018 ME 110, ¶ 7, 191 A.3d 348
- Pearson v. Wendell, 2015 ME 136, ¶ 24, 125 A.3d 1149
- Guardianship of Jewel M., 2010 ME 80, ¶ 41, 2 A.3d 301
- In re Robin T., 651 A.2d 337, 339 (Me. 1994)