

SUPREME COURT OF NEW HAMPSHIRE

Gray v. Kelly

161 N.H. 160 (2010) · Decided November 24, 2010

SUMMARY

The New Hampshire Supreme Court held that res judicata barred Jeffrey Gray’s claims for replevin and damages concerning personal property left at Teri Kelly’s residence. The court concluded that a domestic violence order requiring Gray to retrieve his belongings involved the same cause of action and was effective when rendered, despite the later expiration of the appeal period. The court affirmed dismissal as to Kelly but vacated and remanded dismissal as to Lisa Sorenson because the lower court had not addressed whether she was in privity with Kelly.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Duggan, J.; Dalianis, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	November 24, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Gray appealed the superior court's dismissal of his replevin and damages action based on res judicata and collateral estoppel. The Supreme Court affirmed the dismissal as to Kelly, vacated the dismissal as to Sorenson, and remanded for a determination of privity.
STANDARD OF REVIEW	The court reviews a ruling on a motion to dismiss by considering whether the allegations are reasonably susceptible of a construction permitting recovery. Because the dismissal rested on res judicata as a matter of law, review was de novo; the applicability of res judicata and collateral estoppel were affirmative defenses on which Kelly bore the burden of proof.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential
PARTIES	Jeffrey Gray v. Teri E. Kelly, Lisa Sorenson

TOPICS

- res judicata
- family law procedure
- remedies
- statutory interpretation
- appellate procedure

PRACTICE AREAS

civil procedure

family law

remedies

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the February 2006 domestic violence order had res judicata effect on Gray's later replevin and damages action.
2. Whether a default judgment can support claim preclusion even if it cannot establish collateral estoppel based on issues actually litigated.
3. Whether the trial court had authority to reconsider and reverse its earlier denial of Kelly's motion to dismiss.
4. Whether the February 2006 order became effective immediately when rendered or only after expiration of the appeal period.
5. Whether res judicata barred Gray's claims against Sorenson despite Sorenson's absence from the prior domestic violence proceeding.

HOLDINGS

1. Res judicata barred Gray from relitigating his property claim against Kelly because the domestic violence proceeding and the later action involved the same cause of action, the parties were the same, and the prior proceeding ended in a final judgment on the merits.
2. The court did not decide whether a default judgment can constitute collateral estoppel because, even assuming it cannot, the default judgment could constitute res judicata.
3. The trial court had authority to revisit and reverse its earlier ruling on the motion to dismiss after becoming aware that the earlier ruling might be incorrect.
4. The order became effective when rendered on February 7, 2006, and the thirty-day period for Gray to retrieve his property ran from that date. The order became final thirty-one days later, on March 10, 2006, because Gray did not appeal or obtain a stay.
5. The dismissal of Gray's claims against Sorenson was vacated and remanded because the record did not establish whether Sorenson was in privity with a party to the prior domestic violence proceeding.

KEY QUOTATIONS

"The doctrine of res judicata prevents parties from relitigating matters actually litigated and matters that could have been litigated in the first action." (161 N.H. at 164)

"We hold that the same type of relief is available in both cases and that res judicata precludes Gray from relitigating his claim." (161 N.H. at 165)

"Therefore, while filing a timely appeal prevents a judgment from becoming final, a judgment is nonetheless effective from the time it is rendered unless a party files an appeal or obtains a stay." (161 N.H. at 167)

FACTUAL BACKGROUND

Gray left personal property at Kelly's residence after moving out following their divorce. In a domestic violence proceeding brought by Kelly, the Salem Family Division ordered Gray to retrieve his belongings within thirty days and authorized Kelly to dispose of them if he failed to do so. Gray did not attend the hearing, did not appeal the order, and did not attempt to retrieve the property until after the thirty-day period had expired. He then filed an action seeking return of the property and damages, later adding a replevin claim and Sorenson as a defendant after learning that Kelly had transferred some property to Sorenson.

PROCEDURAL HISTORY

Following a February 2006 domestic violence proceeding, the Salem Family Division ordered Gray to retrieve his belongings from Kelly's residence within thirty days or Kelly could dispose of them. Gray later filed a superior court action seeking return of the property, damages, and replevin, and added Sorenson as a defendant after learning that Kelly had given her some of the property. The superior court initially denied Kelly's motion to dismiss but later reconsidered and dismissed the action on res judicata and collateral-estoppel grounds.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must determine in the first instance whether Sorenson was in privity with a party to the February 2006 domestic violence proceeding. The dismissal as to Kelly remains affirmed.

CASES CITED

- State v. Lake Winnepesaukee Resort, 159 N.H. 42, 45 (2009)
- McNair v. McNair, 151 N.H. 343, 352-54 (2004)
- In re Zachary G., 159 N.H. 146, 151 (2009)
- Morgenroth & Assoc's v. State, 126 N.H. 266, 269 (1985)
- In re Juvenile 2004-637, 152 N.H. 805, 808 (2005)
- Aubert v. Aubert, 129 N.H. 422, 426 (1987)
- Appeal of Univ. System of N.H. Bd. of Trustees, 147 N.H. 626, 629 (2002)
- Kalil v. Town of Dummer Zoning Bd. of Adjustment, 159 N.H. 725, 730 (2010)
- Monahan-Fortin Properties v. Town of Hudson, 148 N.H. 769, 771 (2002)
- Big League Entm't v. Brox Indus., 149 N.H. 480, 483 (2003)
- Walker v. Walker, 158 N.H. 602, 605 (2009)
- Osman v. Gagnon, 152 N.H. 359, 362 (2005)
- Route 12 Books & Video v. Town of Troy, 149 N.H. 569, 575 (2003)
- State v. Looney, 154 N.H. 801, 803 (2007)
- Rollins v. Rollins, 122 N.H. 6, 9-10 (1982)
- Sleeper v. Hoban Family P'ship, 157 N.H. 530, 533 (2008)

