

**COURT OF APPEALS FOR THE THIRTEENTH DISTRICT OF TEXAS,
CORPUS CHRISTI–EDINBURG**

Charlie O. Burnett III v. DRO IP, Ltd.

No. 13-15-00488-CV (Tex. App.—Corpus Christi–Edinburg Sept. 1, 2016) · No. 13-15-00488-CV · Decided
September 1, 2016

SUMMARY

The Thirteenth Court of Appeals of Texas affirmed the trial court’s dismissal of Charlie O. Burnett III’s quiet-title action against DRO IP, Ltd. The court held that res judicata barred Burnett’s claims because they arose from the same property-interest dispute that had been litigated or could have been litigated in prior proceedings. The court also denied DRO’s motions to dismiss the appeal as moot and for appellate sanctions.

CASE DETAILS

COURT	Court of Appeals for the Thirteenth District of Texas, Corpus Christi–Edinburg
WRITING FOR THE COURT	Justice Nelda V. Rodriguez; Justice Rodriguez; Justice Benavides; Justice Perkes
JURISDICTION	Texas
DECIDED	September 1, 2016
DOCKET	13-15-00488-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment dismissing Burnett's quiet-title claims with prejudice, assessing \$30,000 in agreed sanctions, and quieting title in favor of DRO IP, Ltd.
STANDARD OF REVIEW	The opinion does not expressly state a standard of review for the res judicata ruling. Appellate sanctions under Texas Rule of Appellate Procedure 45 require a determination that the appeal was frivolous, meaning the appellant acted in bad faith and had no reasonable expectation of reversal.
PRECEDENTIAL VALUE	Published memorandum opinion; no reporter citation appears in the source text.
PARTIES	Charlie O. Burnett III v. DRO IP, Ltd.

TOPICS

res judicata title disputes appellate procedure sanctions injunctions

PRACTICE AREAS

Civil procedure Real property Appellate procedure Remedies

QUESTIONS PRESENTED

1. Whether res judicata barred Burnett's quiet-title and fraudulent-transfer claims because they were based on the same subject matter and could have been raised in the prior litigation.
2. Whether the appellate court should impose sanctions against Burnett under Texas Rule of Appellate Procedure 45 for bringing a frivolous appeal.
3. Whether the appeal should be dismissed for lack of jurisdiction.

HOLDINGS

1. Res judicata barred Burnett's claims because the prior litigation resulted in a final judgment on the merits, the parties or their privies were identical, and the later claims arose from the same subject matter and could have been raised in the earlier action.
2. Burnett did not adequately brief his contention that a change in decisional law defeated res judicata, and the cited authority did not demonstrate a change in the law governing the validity of the property transfer.
3. The court did not reach Burnett's evidentiary issue concerning the denial of an injunction because the res judicata ruling was dispositive of the appeal.
4. The appeal was not frivolous, so the court denied DRO's motion for appellate sanctions.

KEY QUOTATIONS

“Res judicata, or claim preclusion, prevents a party from bringing a claim that has already been decided by an earlier judgment.” (2)

“The elements required to establish res judicata are “(1) a prior final judgment on the merits by a court of competent jurisdiction, (2) identity of parties or those in privity with them, and (3) a second action based on the same claims that were raised or could have been raised [out of the same subject matter] in the first action.”” (3)

FACTUAL BACKGROUND

Burnett claimed an ownership interest in property at 914 Ashland in Corpus Christi based on a quitclaim deed and challenged a 2011 corporation assignment of a deed of trust or mortgage. In earlier litigation involving the same asserted ownership interest, the court determined that Burnett held no interest in the property at the time of foreclosure and could not prevail on a quiet-title action against Bank of New York Mellon. DRO was found to be in privity with Bank of New York Mellon, and Burnett's later suit asserted claims arising from the same subject matter.

PROCEDURAL HISTORY

Burnett sued DRO to quiet title to real property and challenged the validity of a corporation assignment of a deed of trust or mortgage. The trial court dismissed his claims with prejudice on res judicata grounds, entered a take-nothing judgment, removed Burnett's quitclaim deed from the chain of title, and assessed agreed sanctions. Burnett's motion for new trial was overruled by operation of law. On appeal, he challenged the application of res judicata and the exclusion of evidence concerning injunctive relief; the court affirmed and denied DRO's motions to dismiss the appeal and for appellate sanctions.

DISPOSITION

affirmed

CASES CITED

- Barr v. Resolution Trust Corp., 837 S.W.2d 627, 629 (Tex. 1992)
- Amstadt v. United States Brass Corp., 919 S.W.2d 644, 652–53 (Tex. 1996)
- Burnett v. Bank of New York Mellon, Nos. 13-12-00474-CV & 13-12-00753-CV, 2014 WL 8097058, at *1–3, *9 (Tex. App.—Corpus Christi 2014, pet. denied) (op. on reh'g)
- Marino v. State Farm Fire & Cas. Ins. Co., 787 S.W.2d 948, 950 (Tex. 1990)
- Nueces County, Texas v. MERSCORP Holdings, Inc., No. 2:12-CV-00131, 2013 WL 3353948, at *7 (S.D. Tex. July 3, 2013)
- Caviglia v. Tate, 365 S.W.3d 804, 814 (Tex. App.—El Paso 2012, no pet.)