

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Levin v. Barone

No. 18-1307-cv, United States Court of Appeals for the Second Circuit (June 4, 2019)

SUMMARY

Levin v. Barone (2d Cir. 2019) addresses res judicata in the context of enforcing an I-864 Affidavit of Support under the Immigration and Nationality Act. The Second Circuit affirmed summary judgment against the plaintiff, holding that her federal support claim was barred because it arose from the same factual grouping as her prior New York divorce proceeding, where support issues were or could have been litigated. Applying New York's transactional approach to claim preclusion, the court found the I-864 claim could have been raised in state court, as the facts were related in time and motivation, formed a convenient trial unit, and conformed to party expectations.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	Guido Calabresi; Gerard E. Lynch; Raymond J. Lohier, Jr.
JURISDICTION	Federal
DECIDED	June 4, 2019
DOCKET	18-1307-cv
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment of the United States District Court for the Southern District of New York (Alison J. Nathan, Judge) granting summary judgment.
PRECEDENTIAL VALUE	unpublished
PARTIES	Eva Levin v. Robert Barone

TOPICS

- res judicata
- summary judgment
- civil procedure
- family law
- dissolution of marriage

PRACTICE AREAS

- Family Law
- Immigration
- Civil Procedure

QUESTIONS PRESENTED

1. Whether Levin's claim to enforce the Form I-864 Affidavit of Support is barred by res judicata because it could have been raised in the prior state court divorce proceeding.

HOLDINGS

1. Levin's Form I-864 claim could have been raised in the state court divorce proceeding, and therefore the claim is barred by res judicata.

KEY QUOTATIONS

“a 'final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'” (at 2)

“New York law bars 'a later claim arising out of the same factual grouping as an earlier litigated claim even if the later claim is based on different legal theories or seeks dissimilar or additional relief.'” (at 2)

“'[1] whether the facts are related in time, space, origin, or motivation, [2] whether they form a convenient trial unit, and [3] whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.'” (at 2-3)

“'the resolution of all issues relating to the marriage relationship' including all 'important ancillary issues' such as support, to be determined in a single matrimonial action.” (at 4)

FACTUAL BACKGROUND

Eva Levin and Robert Barone were married. Barone initiated a divorce proceeding in New York State court. After a bench trial, the state court entered a judgment of divorce in which it held that Levin would receive no further maintenance from Barone. Levin also had a federal claim to enforce an Affidavit of Support (Form I-864) under the Immigration and Nationality Act, seeking support for the years she lived with, was married to, and was separated from Barone, in addition to future support.

PROCEDURAL HISTORY

The district court granted summary judgment to Barone, dismissing Levin's claim to enforce an Affidavit of Support (Form I-864) under the Immigration and Nationality Act, concluding that the claim was barred by res judicata due to the prior state court divorce proceeding. The district court stayed its action while the divorce was pending in state court, and after the state court entered a judgment of divorce with no further maintenance, the district court dismissed on res judicata grounds.

DISPOSITION

affirmed

CASES CITED

- Hoblock v. Albany Cty. Bd. of Elections, 422 F.3d 77, 93 (2d Cir. 2005)
- Maharaj v. Bankamerica Corp., 128 F.3d 94, 97 (2d Cir. 1997)

- Burgos v. Hopkins, 14 F.3d 787, 790 (2d Cir. 1994)
- Xiao Yang Chen v. Fischer, 6 N.Y.3d 94, 100-01 (2005)
- Moody v. Sorokina, 830 N.Y.S.2d 399, 401-02 (4th Dep't 2007)
- Boronow v. Boronow, 71 N.Y.2d 284, 290 (1988)

OPINION

PER CURIAM.

18-1307-cv Levin v. Barone UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT SUMMARY ORDER RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT=S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION ASUMMARY ORDER@).

A PARTY CITING TO A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL. 1 At a stated term of the United States Court of Appeals for the Second Circuit, 2 held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the 3 City of New York, on the 4th day of June, two thousand nineteen. 4 5 PRESENT: GUIDO CALABRESI, 6 GERARD E. LYNCH, 7 RAYMOND J. LOHIER, JR., 8 Circuit Judges.

9 ----- 10 EVA LEVIN, 11 12 Plaintiff-Appellant, 13 14 v. No. 18-1307-cv 15 16 ROBERT BARONE, 17 18 Defendant-Appellee. 19 ----- 1 FOR APPELLANT: Eva Levin, pro se, New York, 2 NY. 3 4 FOR APPELLEE: Michael L. Walker, Law 5 Offices of Michael L. Walker, 6 Brooklyn, NY.

7 Appeal from a judgment of the United States District Court for the 8 Southern District of New York (Alison J. Nathan, Judge). 9 UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, 10 AND DECREED that the judgment of the District Court is AFFIRMED. 11 Eva Levin, a Swedish citizen proceeding pro se, appeals from the grant of 12 summary judgment by the District Court (Nathan, J.) in favor of Levin's former 13 husband, Robert Barone, which resulted in the dismissal of Levin's claim to 14 enforce an Affidavit of Support (Form I-864) under the Immigration and 15 Nationality Act.

See 8 C.F.R. § 213a.2(a), (b). We assume the parties' 16 familiarity with the underlying facts and the record of prior proceedings, to 17 which we refer only as necessary to explain our decision to affirm. 18 Here, Barone initiated a divorce proceeding against Levin in New York 19 State court.

After a bench trial, the State court entered a judgment of divorce in 20 which it held that Levin would receive no further maintenance from Barone. 2 1 Having stayed its action while the divorce proceeding was pending in State 2 court, the District Court concluded that Levin's I-864 support claim was barred 3 by res judicata. 4 The District Court correctly applied New York law to determine the 5 preclusive effect of New York State court judgments.

See *Hoblock v. Albany 6 Cty. Bd. of Elections*, 422 F.3d 77, 93 (2d Cir. 2005); 28 U.S.C. § 1738. Under New 7 York law, a "final judgment on the merits of an action precludes the parties or 8 their privies from relitigating issues that were or could have been raised in that 9 action." *Maharaj v. Bankamerica Corp.*, 128 F.3d 94, 97 (2d Cir. 1997) (quotation 10 marks omitted).

New York law bars "a later claim arising out of the same 11 factual grouping as an earlier litigated claim even if the later claim is based on 12 different legal theories or seeks dissimilar or additional relief." *Burgos v. 13 Hopkins*, 14 F.3d 787, 790 (2d Cir. 1994).

To determine whether claims arise 14 from the same factual grouping under New York law, we consider "[1] whether 15 the facts are related in time, space, origin, or motivation, [2] whether they form a 16 convenient trial unit, and [3] whether their treatment as a unit conforms to the 17 parties' expectations or business understanding or usage." *Xiao Yang Chen v. 3 1 Fischer*, 6 N.Y.3d 94, 100–01 (2005) (quoting Restatement [Second] of Judgments 2 § 24 (2) (Am.

Law Inst. 1982)). 3 The only contested issue on appeal is whether Levin's Form I-864 claim 4 was or could have been raised in the State court action. Applying the three New 5 York factors, we agree with the District Court that Levin's claim could have been 6 raised in the divorce proceedings, and that the claim was therefore barred by res 7 judicata.

The underlying facts of both lawsuits are related in time and 8 motivation. In both proceedings, Levin sought support for the years she lived 9 with, was married to, and was separated from Barone, in addition to future 10 support.

The underlying facts also form a convenient trial unit. The support 11 obligations set forth in the Affidavit of Support could easily have been 12 considered along with other support obligations arising from the marriage. 13 Form I-864 financial obligations have been enforced in New York State court 14 divorce proceedings, see *Moody v. Sorokina*, 830 N.Y.S.2d 399, 401–02 (4th Dep't 15 2007), and New York courts have expressed a preference for "the resolution of all 16 issues relating to the marriage relationship," including all "important ancillary 17 issues" such as support, to be determined in a single matrimonial action, 4 1 *Boronow v. Boronow*, 71 N.Y.2d 284, 290 (1988).

Lastly, with respect to whether 2 treatment of the facts as a unit conforms to the parties' expectations, we note that 3 Levin mentioned the federal court action in her state court divorce filings, 4 although she did not explicitly suggest that the State court also consider her I-864 5

claim. 6 We have considered Levin's remaining arguments and conclude that they 7 are without merit.

For the foregoing reasons, the judgment of the District Court 8 is AFFIRMED. 9 FOR THE COURT: 10 Catherine O'Hagan Wolfe, Clerk of Court 5