

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Browning v. Navarro

894 F.2d 99 (5th Cir. 1990) · Decided January 26, 1990

SUMMARY

The Fifth Circuit denied petitions for rehearing in a dispute concerning whether res judicata barred an attack on a state-court judgment alleged to have been fraudulently obtained. The court held that Robbie Holloway could not benefit from an earlier reversal because she had not appealed and the court lacked jurisdiction over her under *Torres v. Oakland Scavenger Co.*

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Duhe, Circuit Judge; Politz, Circuit Judge; Davis, Circuit Judge
JURISDICTION	Federal
DECIDED	January 26, 1990
DISPOSITION	writ_denied
PROCEDURAL POSTURE	Petition for rehearing of the Fifth Circuit's decision in <i>Browning v. Navarro</i> , 887 F.2d 553 (5th Cir. 1989), which had held that res judicata barred the Holloways from attacking a state-court judgment as fraudulently obtained.
STANDARD OF REVIEW	The court considered whether the rehearing petition presented an argument that could be raised for the first time on rehearing and whether the court had appellate jurisdiction over Robbie Holloway.
PRECEDENTIAL VALUE	published and precedential

TOPICS

- appellate jurisdiction
- appellate procedure
- civil procedure
- res judicata

PRACTICE AREAS

- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Robbie Holloway could raise for the first time in a petition for rehearing the argument that res judicata did not apply because she was not a party to *Holloway v. Walker*.

2. Whether the Fifth Circuit had jurisdiction over Robbie Holloway in Browning II despite her failure to join the appeal.
3. Whether the reversal in Browning II could inure to Robbie Holloway's benefit.

HOLDINGS

1. The court lacked jurisdiction over Robbie Holloway in Browning II because she was not named in the notice of appeal.
2. A reversal on appeal could not inure to Robbie Holloway's benefit because the court lacked jurisdiction over her in the appeal that produced the reversal.
3. The petition for rehearing was denied.

KEY QUOTATIONS

“This language, however, is no longer good law in light of Torres v. Oakland Scavenger Co., 487 U.S. 312, 108 S.Ct. 2405, 101 L.Ed.2d 285 (1988).” (894 F.2d at 100)

“The Torres Court held that the failure to name a party in the notice of appeal was a jurisdictional defect.” (894 F.2d at 100)

FACTUAL BACKGROUND

The Brownings obtained a state-court judgment against the Holloways, referred to as the Walker judgment. The district court later held that the Walker judgment was valid, and Robbie Holloway did not appeal that judgment. Although the Fifth Circuit partially reversed in Browning II as to appealing parties, Robbie Holloway sought to benefit from that reversal despite not having been named as an appellant.

PROCEDURAL HISTORY

The district court entered a May 23, 1986 judgment holding the Walker judgment valid. In Browning II, the Fifth Circuit partially reversed that judgment as to parties who appealed. Robbie Holloway did not appeal the district court judgment, and the court concluded that it lacked jurisdiction over her in Browning II. On rehearing in Browning III, she argued for the first time that res judicata should not preclude her because she was not a party to the earlier case.

DISPOSITION

writ_denied

CASES CITED

- Browning v. Navarro, 887 F.2d 553 (5th Cir. 1989)
- Holloway v. Walker, 784 F.2d 1287 (5th Cir. 1986) (per curiam), cert. denied, 479 U.S. 984 (1986)
- United States v. Bigler, 817 F.2d 1139, 1140 (5th Cir. 1987), cert. denied, 484 U.S. 842 (1987)
- Wells v. Rushing, 760 F.2d 660, 661 (5th Cir. 1985)

- *Browning v. Navarro*, 826 F.2d 335 (5th Cir. 1987)
- *Annat v. Beard*, 277 F.2d 554, 558 (5th Cir. 1960), cert. denied, 364 U.S. 908 (1960)
- *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 108 S. Ct. 2405, 101 L. Ed. 2d 285 (1988)

OPINION

DUHÉ, J.

Appeals from the United States District Court For the Northern District of Texas. ON PETITIONS FOR REHEARING (Opinion Oct. 23, 1989, 5 Cir., 1989, 887 F.2d 553) Before POLITZ, DAVIS and DUHÉ, Circuit Judges. DUHÉ, Circuit Judge: In *Browning v. Navarro*, 887 F.2d 553 (5th Cir.1989) (*Browning III*), we held that the preclusive effect of *Holloway v. Walker*, 784 F.2d 1287 (5th Cir.) (per curiam), cert. denied, 479 U.S. 984, 107 S.Ct.

571, 93 L.Ed.2d 576 (1986) barred the Holloways from attacking a state court judgment (the Walker judgment) on the ground that it was fraudulently obtained. The result of our decision was to allow the judgment creditors, the Brownings, to retain the spoils of their state court victory.

The Holloways now seek a rehearing. All of the arguments which they make, except one, were dealt with in *Browning III* and we will not revisit them. The Holloways now argue on rehearing, for the first time, that Robbie Holloway should not be precluded by res judicata because she was not a party to *Holloway v. Walker*. Generally speaking a party may not raise an argument for the first time in a [48] petition for rehearing.

See, e.g., *United States v. Bigler*, 817 F.2d 1139, 1140 (5th Cir.), cert. denied, 484 U.S. 842, 108 S.Ct. 130, 98 L.Ed.2d 88 (1987) and *Wells v. Rushing*, 760 F.2d 660, 661 (5th Cir.1985). Before we can grapple with whether Robbie Holloway is procedurally barred from raising this issue, we must decide whether she is a proper party to this appeal. Robbie Holloway did not appeal the district court's judgment of May 23, 1986 which held that the Walker judgment was valid.

The Brownings argue that the May 23 judgment, therefore, is final as to her. Robbie Holloway argues that the May 23 judgment was reversed in part by *Browning v. Navarro*, 826 F.2d 335 (5th Cir.1987) (*Browning II*) and that under *Annat v. Beard*, 277 F.2d 554, 558 (5th Cir.), cert. denied, 364 U.S. 908, 81 S.Ct. 270, 5 L.Ed.2d 223 (1960) she should be allowed to share in the fruits of Pat Holloway's partial victory in *Browning II*.

There is language in *Annat* which supports Robbie Holloway's position. The An-nat court stated "A reversal on appeal does not inure to the benefit of those who did not join in the appeal unless the interests of the non-appealing parties are so interwoven and dependent as to be inseparable." 277 F.2d at 558. This language, however, is no longer good law in light of *Torres v. Oakland Scavenger Co.*, 487 U.S. 312, 108 S.Ct.

2405, 101 L.Ed.2d 285 (1988). The Torres Court held that the failure to name a party in the notice of appeal was a jurisdictional defect. Id. 108 S.Ct. at 2409. Thus we did not have jurisdiction over Robbie Holloway in Browning II and our decision to reverse could not inure to her benefit.

The petition for rehearing, therefore, is DENIED.