

SUPREME COURT OF APPEALS OF WEST VIRGINIA

West Virginia Human Rights Commission v. The Esquire Group, Inc.

618 S.E.2d 463, 217 W. Va. 454 (2005) · No. No. 32165 · Decided June 30, 2005

SUMMARY

The Supreme Court of Appeals of West Virginia reversed summary judgment dismissing a housing-discrimination action as barred by res judicata. The court held that the disabled child and the West Virginia Human Rights Commission were not in privity with the parents in the prior restrictive-covenant action, and that the claims and available relief were not sufficiently identical. The case was remanded for trial, while the court declined to address the reasonable-accommodation issue because it had not been litigated to final judgment.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Davis; Justice Starcher
JURISDICTION	West Virginia
DECIDED	June 30, 2005
DOCKET	No. 32165
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The appellants appealed from orders of the Circuit Court of Cabell County granting Esquire summary judgment and dismissing a housing-discrimination action on res judicata and reasonable-accommodation grounds. The Supreme Court of Appeals reversed and remanded for further proceedings.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper only when there is no genuine issue of material fact and further inquiry into the facts is not desirable to clarify application of the law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Appeals of West Virginia
PARTIES	West Virginia Human Rights Commission, Scott Black, Mary Ellen Black, Rebecca A. Black, by and through her parents and next friends v. The Esquire Group, Inc.

TOPICS

res judicata

summary judgment

reasonable accommodation

ada / disability

civil rights

PRACTICE AREAS

civil procedure

civil rights

fair housing

disability discrimination

real estate

QUESTIONS PRESENTED

1. Whether the housing-discrimination claim was barred by res judicata because of the prior restrictive-covenant action.
2. Whether Rebecca Black and the Human Rights Commission were parties to, or in privity with parties to, the prior restrictive-covenant action.
3. Whether the housing-discrimination claim was the same cause of action as the prior restrictive-covenant claim or could have been resolved in that proceeding.
4. Whether summary judgment was proper on the alternative ground that Esquire had offered a reasonable accommodation.

HOLDINGS

1. Res judicata did not apply because Rebecca Black and the Human Rights Commission were neither parties to nor in privity with parties to the prior action. Privity does not automatically arise from a parent-child relationship, and the Human Rights Commission acted pursuant to an independent statutory public-interest authority rather than merely as a proxy for the individual complainants.
2. The third element of res judicata was not satisfied because the Human Rights Commission's statutory housing-discrimination claim was distinct from the private restrictive-covenant action and sought remedies, including civil penalties vindicating the public interest, that were unavailable in the prior proceeding.
3. Summary judgment on reasonable accommodation was not proper because the issue was fact-intensive and the record did not adequately develop material facts concerning the reasonableness and necessity of the proposed accommodation. The court declined to resolve the accommodation issues on the existing record.

KEY QUOTATIONS

"Before the prosecution of a lawsuit may be barred on the basis of res judicata, three elements must be satisfied. First, there must have been a final adjudication on the merits in the prior action by a court having jurisdiction of the proceedings. Second, the two actions must involve either the same parties or persons in privity with those same parties. Third, the cause of action identified for resolution in the subsequent proceeding either must be identical to the cause of action determined in the prior action or must be such that it could have been resolved, had it been presented, in the prior action." (469)

"Determining whether an accommodation is reasonable involves a highly fact-based analysis." (477)

FACTUAL BACKGROUND

The Blacks owned property in the Esquire Country Club subdivision and constructed a fence around an in-ground swimming pool despite restrictive covenants requiring architectural approval and limiting fence height. Their daughter, Rebecca, had leukemia, and the Blacks asserted that the fence was medically necessary to prevent contamination and protect her from unsupervised children because she could not use public pools. After Esquire obtained a permanent injunction concerning the fence, the Blacks requested a variance based on Rebecca's condition; Esquire offered to refrain from enforcing the injunction while the fence remained medically necessary. The Human Rights Commission subsequently brought a housing-discrimination action alleging failure to provide reasonable accommodation.

PROCEDURAL HISTORY

Esquire previously obtained a permanent injunction requiring the Blacks to remove a fence alleged to violate subdivision restrictive covenants. After the Blacks raised disability-related accommodation issues, the Human Rights Commission investigated and filed a housing-discrimination action in circuit court, in which the Blacks intervened. The circuit court granted Esquire summary judgment, ruling that the claim was barred by res judicata and alternatively that Esquire had offered a reasonable accommodation; the circuit court denied a Rule 59(e) motion, and the appellants appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The September 8, 2003, and April 19, 2004, orders of the Circuit Court of Cabell County were reversed, and the case was remanded for further proceedings and factual development, including litigation of the housing-discrimination claim.

CASES CITED

- *Painter v. Peavy*, 192 W. Va. 189, 451 S.E.2d 755 (1994)
- *Aetna Casualty & Surety Co. v. Federal Insurance Co. of N.Y.*, 148 W. Va. 160, 133 S.E.2d 770 (1963)
- *Conley v. Spillers*, 171 W. Va. 584, 301 S.E.2d 216 (1983)
- *State ex rel. Connellsville By-Product Coal Co. v. Continental Coal Co.*, 117 W. Va. 447, 186 S.E. 119 (1936)
- *Montana v. United States*, 440 U.S. 147, 153-54, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979)
- *Blake v. Charleston Area Medical Center, Inc.*, 201 W. Va. 469, 498 S.E.2d 41 (1997)
- *Cater v. Taylor*, 120 W. Va. 93, 196 S.E. 558 (1938)
- *State v. Miller*, 194 W. Va. 3, 459 S.E.2d 114 (1995)
- *Gribben v. Kirk*, 195 W. Va. 488, 466 S.E.2d 147 (1995)
- *Glover v. Narick*, 184 W. Va. 381, 400 S.E.2d 816 (1990)
- *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 291, 122 S. Ct. 754, 151 L. Ed. 2d 755 (2002)
- *Farley v. Graney*, 146 W. Va. 22, 119 S.E.2d 833 (1960)
- *In re Kenna Homes Cooperative Corp.*, 210 W. Va. 380, 557 S.E.2d 787 (2001)

- Bryant Woods Inn v. Howard County, Maryland, 124 F.3d 597, 603 (4th Cir. 1997)
- Thomas v. Goodwin, 164 W. Va. 770, 266 S.E.2d 792 (1980)
- Mountain Lodge Association v. Crum & Forster Indemnity Co., 210 W. Va. 536, 558 S.E.2d 336 (2001)
- Walker v. Doe, 210 W. Va. 490, 558 S.E.2d 290 (2001)
- Mrotek v. Coal River Canoe Livery, Ltd., 214 W. Va. 490, 590 S.E.2d 683 (2003)
- Tiernan v. Charleston Area Medical Center, Inc., 203 W. Va. 135, 506 S.E.2d 578 (1998)
- Tolliver v. Kroger Co., 201 W. Va. 509, 498 S.E.2d 702 (1997)
- Exxon Corp. v. Hunt, 475 U.S. 355, 361, 106 S. Ct. 1103, 89 L. Ed. 2d 364 (1986)
- United States ex rel. Bettis v. Odebrecht Contractors of California, Inc., 393 F.3d 1321, 1323 (D.C. Cir. 2005)
- Church of American Knights of the Ku Klux Klan v. Kerik, 356 F.3d 197, 202 (2d Cir. 2004)
- Porter v. Ascension Parish School Board, 393 F.3d 608, 613 (5th Cir. 2004)
- Banks v. City of Whitehall, 344 F.3d 550, 551-52 (6th Cir. 2003)
- McKay v. United States Department of Transportation, 340 F.3d 695, 698 (8th Cir. 2003)
- Konop v. Hawaiian Airlines, Inc., 302 F.3d 868, 881 (9th Cir. 2002)

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