

SUPREME COURT OF VIRGINIA

Kellogg v. Green, 295 Va. 39

809 S.E.2d 631 (2018) · No. Record No. 170643 · Decided February 22, 2018

SUMMARY

The Supreme Court of Virginia considered whether a circuit court properly sustained a plea of res judicata based on an order denying a contempt-related show cause petition in a still-pending divorce action. The court held that the show cause order was not a final judgment because the divorce action remained pending and the order did not finally resolve enforcement of the parties’ agreements. The court reversed the dismissal of the separate breach of contract action and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Virginia
WRITING FOR THE COURT	Justice S. Bernard Goodwyn; All the Justices
JURISDICTION	Virginia
DECIDED	February 22, 2018
DOCKET	Record No. 170643
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Kellogg appealed from an order sustaining Green's plea of res judicata and dismissing her breach-of-contract action. The appeal concerned whether an order denying a contempt-related show-cause petition in a still-pending divorce action was a final judgment capable of supporting claim preclusion.
STANDARD OF REVIEW	Whether an action is precluded by res judicata is a question of law reviewed de novo.
PRECEDENTIAL VALUE	precedential
PARTIES	Connie Kellogg v. Christopher B. Green

TOPICS

- res judicata
- civil procedure
- family law procedure
- appellate procedure
- breach of contract

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the order denying and dismissing Kellogg's show-cause petition was a final judgment for purposes of res judicata when the underlying divorce action remained pending and the court had retained jurisdiction to enforce the parties' agreements.

HOLDINGS

1. An order denying and dismissing a show-cause petition is not a final judgment for purposes of res judicata when the underlying action remains pending, the court has retained jurisdiction to enforce the parties' agreements, and the order does not indicate that the agreements are unenforceable or that nothing further remains to be done.

KEY QUOTATIONS

“Thus, a prerequisite for claim preclusion is a final judgment on the merits of a claim.” (295 Va. at 44)

“Thus, it is clear that the Show Cause Order was not a final order for purposes of res judicata as regards the enforceability of the Agreements.” (295 Va. at 46)

“Because there was no relevant final judgment entered, res judicata does not bar Kellogg’s Contract Action.” (295 Va. at 47)

FACTUAL BACKGROUND

Kellogg and Green divorced, and the final decree incorporated their premarital and amended premarital agreements while retaining the divorce action on the docket for enforcement. Kellogg sought a rule to show cause alleging that Green owed her \$82,949.44 under the amended agreement, but the circuit court dismissed the petition because the agreement did not specify the requirements for payment and a show-cause proceeding was improper. Kellogg then filed a separate breach-of-contract action seeking the same alleged debt, which the circuit court dismissed as barred by res judicata.

PROCEDURAL HISTORY

The Circuit Court of Gloucester County entered a divorce decree incorporating the parties' premarital agreements and later retained the divorce matter on its docket to enforce those agreements. The court denied and dismissed Kellogg's petition for a rule to show cause, concluding that a show-cause proceeding was improper, and Kellogg subsequently filed a separate breach-of-contract action seeking the same alleged amount. The circuit court sustained Green's plea of res judicata and dismissed the contract action, then denied reconsideration; the Supreme Court of Virginia reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion.

CASES CITED

- Caperton v. A.T. Massey Coal Co., 285 Va. 537, 548, 740 S.E.2d 1, 7 (2013)
- Lee v. Spoden, 290 Va. 235, 246-47, 776 S.E.2d 798, 804-05 (2015)
- Norris v. Mitchell, 255 Va. 235, 239, 495 S.E.2d 809, 812 (1998)
- Super Fresh Food Mkts. v. Ruffin, 263 Va. 555, 561, 561 S.E.2d 734, 737 (2002)
- Johnson v. Woodard, 281 Va. 403, 409-10, 707 S.E.2d 325, 328 (2011)
- Brooks v. Roanoke Cty. Sanitation Auth., 201 Va. 934, 936, 114 S.E.2d 758, 760 (1960)
- Turner v. Wexler, 244 Va. 124, 128, 418 S.E.2d 886, 888 (1992)