

SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

217 W. Va. 454 (2005) · Decided June 30, 2005

SUMMARY

The West Virginia Supreme Court of Appeals held that a housing discrimination claim brought by the West Virginia Human Rights Commission and intervening homeowners was not barred by res judicata following an earlier restrictive-covenant action. The court concluded that the homeowners’ daughter and the Commission were not in privity with the parties to the earlier action, reversed summary judgment for Esquire Group, and remanded for trial.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per curiam; Davis; Starcher
JURISDICTION	West Virginia
DECIDED	June 30, 2005
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Blacks and the West Virginia Human Rights Commission appealed from summary judgment dismissing a housing-discrimination action based on res judicata, compulsory-counterclaim principles, and the circuit court's conclusion that Esquire had offered a reasonable accommodation.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. Summary judgment is proper only when there is no genuine issue of material fact and factual inquiry is not desirable to clarify the application of law.
PRECEDENTIAL VALUE	Published opinion; precedential decision of the Supreme Court of Appeals of West Virginia.
PARTIES	Scott Black, Mary Ellen Black, West Virginia Human Rights Commission v. The Esquire Group, Inc.

TOPICS

- reasonable accommodation
- res judicata
- summary judgment
- civil rights
- real estate

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the housing-discrimination claim was barred by res judicata because of the prior restrictive-covenant injunction proceeding.
2. Whether Rebecca Black and the West Virginia Human Rights Commission were parties or in privity with parties to the prior restrictive-covenant proceeding.
3. Whether the housing-discrimination claim was a compulsory counterclaim that should have been asserted in the prior proceeding.
4. Whether the housing-discrimination claim brought by the Human Rights Commission constituted the same cause of action as the prior restrictive-covenant claim for res judicata purposes.
5. Whether summary judgment was proper on the issue of reasonable accommodation.

HOLDINGS

1. A parent-child relationship does not automatically create privity for claim-preclusion purposes. Because the parents litigated the restrictive-covenant action in their individual capacities and did not represent Rebecca's distinct statutory fair-housing interest, Rebecca was not in privity with them.
2. The Human Rights Commission was not in privity with the Blacks for purposes of the prior restrictive-covenant action.
3. The Human Rights Commission's housing-discrimination action was not barred by res judicata because it was not the same cause of action as the prior restrictive-covenant proceeding and could not have afforded the same relief in that proceeding.
4. The housing-discrimination claim was not required to be asserted as a compulsory counterclaim in the prior restrictive-covenant action because the Blacks were not entitled to assert Rebecca's claim in their individual capacities and the prior case did not include the necessary parties.
5. The grant of summary judgment could not be sustained on the reasonable-accommodation issue because substantial factual issues remained regarding the elements of the housing-discrimination claim and whether Esquire's proposed accommodation was reasonable.

KEY QUOTATIONS

“A circuit court’s entry of summary judgment is reviewed *de novo*” (460)

“Before the prosecution of a lawsuit may be barred on the basis of *res judicata*, three elements must be satisfied.” (460)

“preclusion is fair so long as the relationship between the nonparty and a party was such that the nonparty had the same practical opportunity to control the course of the proceedings that would be available to a party.” (461)

“At best this portion of the lower court’s order takes on the character of an advisory opinion and such *obiter dicta* is not becoming a court.” (463)

FACTUAL BACKGROUND

The Blacks owned a home in the Esquire Country Club subdivision and constructed a five-foot fence around a swimming pool intended for their daughter, Rebecca, who had leukemia and could not safely use public pools during treatment. The subdivision's restrictive covenants limited fences to twenty-four inches absent approval, and Esquire obtained a permanent injunction enforcing those covenants. After the injunction proceedings, the Blacks asserted that the fence was medically necessary and requested a variance; Esquire declined to grant an immediate permanent variance but agreed not to immediately enforce the injunction. The Human Rights Commission later brought a fair-housing discrimination action alleging that Esquire failed to make reasonable accommodation for Rebecca's disability.

PROCEDURAL HISTORY

Esquire previously obtained a permanent injunction requiring the Blacks to remove a fence allegedly violating subdivision restrictive covenants. After the Blacks filed an administrative housing-discrimination complaint, the West Virginia Human Rights Commission investigated, found reasonable cause, and filed a civil action in circuit court; Rebecca Black, through her parents, intervened. The Circuit Court of Cabell County granted Esquire summary judgment on September 10, 2003, denied the Blacks' Rule 59(e) motion, and entered a subsequent order dated April 19, 2004. The Supreme Court of Appeals reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the September 8, 2003, and April 19, 2004, orders of the Circuit Court of Cabell County and remand for further proceedings and trial on 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 New York*, 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 (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 (2002)
- *State v. General Daniel Morgan Post No. 548, V.F.W.*, 144 W. Va. 137, 107 S.E.2d 353 (1959)

- Farley v. Graney, 146 W. Va. 22, 119 S.E.2d 833 (1960)
- Thomas v. Goodwin, 164 W. Va. 770, 266 S.E.2d 792 (1980)

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