

1982

Joyce M. Despain v. Robert v. Despain, Individually And As General Partner of R & D Investment Company; And as General Parter Of Despain Investment Company; R & D Investment Company, A Limited Partnership; And Despain Investment Compnay, A Limited Partnership : Brief of Respondent

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IN THE SUPREME COURT

STATE OF UTAH

* * * * *

LOYCE M. DESPAIN,)
)
Plaintiff-Appellant,)
)
vs.)
)
ROBERT V. DESPAIN, individually)
and as general partner of R & D)
Investment Company; and as)
general partner of Despain)
Investment Company; R & D)
INVESTMENT COMPANY, a limited)
partnership; and DESPAIN)
INVESTMENT COMPANY, a limited)
partnership,)
)
Defendants-Respondents.)

BRIEF OF RESPONDENT
Case No. 13402

* * * * *

On Appeal from the Third Judicial District Court
of Salt Lake County, State of Utah
The Honorable Jay E. Banks Presiding

* * * * *

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FILED

AUG 25 1982

Utah Supreme Court Utah

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JOYCE M. DESPAIN,)
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INVESTMENT COMPANY, a limited)
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IN THE SUPREME COURT

STATE OF UTAH

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JOYCE M. DESPAIN,)
)
 Plaintiff-Appellant,)

vs.)
)

BRIEF OF RESPONDENT

ROBERT V. DESPAIN, individually)
 and as general partner of R & D)
 Investment Company; and as)
 general partner of Despain)
 Investment Company; R & D)
 INVESTMENT COMPANY, a limited)
 partnership; and DESPAIN)
 INVESTMENT COMPANY, a limited)
 partnership,)
)
 Defendant s-Respondent s.)

Case No. 13402

* * * * *

NATURE OF THE CASE

Appellant seeks to re-litigate fraud and breach of fiduciary duty claims originally raised and settled in her divorce action.

DISPOSITION IN LOWER COURT

The Third Judicial District Court for Salt Lake County, State of Utah, the Honorable Jay E. Banks presiding, granted Respondent's Motion to Dismiss the Complaint of the plaintiff with prejudice pursuant to Rule 12(b)(6) of the Utah

Rules of Civil Procedure applying the Doctrine of Res Judicata, after determining that Appellant sought to relitigate the questions she had litigated and settled in the action Joyce M. Despain v. Robert V. Despain, D-12533, Third Judicial District Court for Salt Lake County, State of Utah.

RELIEF SOUGHT ON APPEAL

Respondents seek affirmation of the Judgment of the district court dismissing with prejudice the complaint of the plaintiff.

STATEMENT OF FACTS

Respondents would accept the Statement of Facts made by Appellant as a partial statement, that is, a statement of the facts occurring after the entry of the decree of divorce and the following statement is hereby submitted as a supplement to the Statement of Facts made by Appellant to describe the original action.

The instant action is an outgrowth of matters originally before the court in the Third Judicial District Court in the action Joyce M. Despain v. Robert V. Despain, Case No. D-12533 in the Third Judicial District Court for Salt Lake County, State of Utah. (Supplemental Record on Appeal.) The divorce was initiated November 15, 1973, when Joyce M. Despain filed the action against Robert V. Despain. The property about

which the complaint in the instant matter was initiated was involved as part of the marital property of the parties. It was acquired by Robert and Joyce Despain prior to the institution of the action for divorce (paragraphs 5, 11, and 15 of plaintiff's Complaint in this action (R. 2-4) and paragraph 9 of Appellant's Complaint in her action for divorce (Supplemental R. 6). Appellant's claim to an interest in that property was pursued by the Appellant when she filed her amended complaint in the divorce action (paragraph 14, Supplemental R. 23) and in the second amended complaint in the divorce action (paragraph 14, Supplemental R. 70). The partnerships which are parties to the instant matter were formed prior to the entry of the decree of divorce. An accounting for and inclusion of their assets in the marital estate was part of the divorce action (paragraphs 6, 11, 13 and 15 of Plaintiff's Complaint in this action, R. 2-4, Supplemental R. 37, 71-74, 77-78).

The property in issue in the instant matter and the actions which the Appellant alleges were fraudulent, constituted a breach of fiduciary duty and formed the basis for the instant action, and all involved property, actions, transactions, claims of fraud and claims of breach of fiduciary duty brought before the Third District Court as part of the divorce action in paragraph 9 of the divorce complaint

(Supplemental R. 6), paragraph 14 in the amended divorce complaint, (Supplemental R. 23), paragraph 14 in the second amended divorce complaint, (Supplemental R. 70) and, most importantly, the second cause of action in the second amended divorce complaint, (Supplemental R. 71-72) where the plaintiff alleged fraud and breach of fiduciary duty, then requested relief similar to the relief requested in the instant action (Supplemental R. 73-74).

The partnership defendants in the instant action are those formed prior to the divorce or their successors and they were represented in the divorce action by their own counsel, Kay Lewis. They fully responded to the Appellant's questions about the transactions Appellant seeks to have heard again by responding to interrogatories when requested to do so on June 23, 1976. (Supplemental R. 77-32).

The parties and issues of fraud and breach of fiduciary duty were before the Court when the stipulation and property settlement agreement which resolved the divorce action was executed and filed (Supplemental R. 94, 96). It was accepted by the Court and the fraud and breach of fiduciary duty claims, the same claims asserted by the Appellant in the instant action, were compromised and settled and the settlement was accepted by the court (Supplemental R. 96, 98, 101, 106 and 108).

In paragraph 11 of plaintiff's complaint in the instant action (R. 3), she alleges that before any transfers of real property and securities, marital difficulties grew and mutual distress and animosity followed thereafter. It is asserted that the parties attempted reconciliation which failed. (paragraph 15, R. 4). Appellant alleged in paragraph 13 and 15 of her complaint (R. 4) that all of the transactions of which she now complains were unknown to her and were taken prior to the resumption of the divorce proceedings. However, these same actions which Appellant challenged in this action were challenged by her in the second cause of action (Supplemental R. 71-74) in her second amended divorce complaint. They were settled (Supplemental R. 94 and 95) and the settlement was accepted by the Court November 24, 1976, when the court executed and entered the decree of divorce thus judicially resolving all of these claims (Supplemental R. 101, 106, 108).

The stipulation and property settlement which resolved the divorce action between the parties (Supplemental R. 95) and the Decree of Divorce (Supplemental R. 106-110) specifically included R & D Investment as a party to the Agreement and a party to the Decree (Supplemental R. 103).

ARGUMENT

THE APPELLANT'S ACTION IS BARRED BY APPLICATION OF THE DOCTRINE OF RES JUDICATA RULED BY THE TRIAL COURT.

Utah law includes the Doctrine of Res Judicata which bars re-prosecution in a subsequent litigation of all claims which were maintained or could have been maintained in prior litigation. Wheadon v. Pearson, 14 Utah 2d 45, 376 P.2d 945 (1962); Warren Irrigation Co. v. Brown 28 Utah 2d 103, 498 P.2d 567 (1972). Belliston v. Texaco, Inc. 528 P.2d 379, 380 (Utah 1974). In the instant action, the Appellant charged in her second amended divorce complaint that the Respondent, Robert V. Despain, had defrauded her and had breached fiduciary duties to her. In the complaint in this action she simply elaborated on those themes by incorporating descriptions of events occurring after the divorce was entered. The limited partnerships who were parties to the Appellant's action in the instant matter were also parties to the settlement of the prior action. This attempt to re-litigate questions previously considered by the court is barred by the Doctrine of Res Judicata.

Appellant seeks in her brief to state that this is not the situation by emphasizing the facts which occurred after the entry of the decree of divorce. However, these do not change the application of the Doctrine of Res Judicata. Examination of the second claim in the second amended divorce complaint and

the complaint in the instant action reveal the same claim. The sole difference is the verbosity of the complaint in the instant action.

It is clear that the claims of the Appellant in the instant action are the same claims that she previously asserted against Respondent, by simply updating the facts to bring in later events. Appellant believed that she had been defrauded and fiduciary duties to her had been breached, but she had asserted those claims in her divorce action and with knowledge of the claims, had settled them, as well as all other claims presented in her divorce action when she settled it. The trial court correctly rejected this re-litigation attempt.

Appellant seeks to exempt this action from application of the Doctrine of Res Judicata based on three decisions of this Court. St Pierre v. Edmonds, 645 P.2d 615 (Utah 1982); McBride v. Jones, 615 P.2d 431 (Utah 1980); Boyce v. Boyce, 509 P.2d 928 (Utah 1980). However, the instant matter is totally distinguishable from these actions. In each of the three cases cited and discussed by the Appellant the allegations of fraud arose after the entry of the decree. In McBride, they were raised several years later. In Boyce, they were presented shortly after the entry of the decree when Mrs. Boyce secured a copy of a financing statement prepared by Mr. Boyce to raise the money to effect the agreed-upon settlement. In St. Pierre,

Sandra St. Pierre alleged that Stanley Edmonds forced her, through harassment, threats of bodily harm, physical abuse and intimidation to sign the documents which settled the divorce action. This Court determined in each case that the allegations raised sufficient issue to require the trial court to hear the evidence that the claimants said they could present.

In this case the allegations of fraud were raised by the plaintiff as part of the divorce action. Then, after raising those allegations in her pleadings, she entered into a settlement agreement. That agreement was thereafter accepted by the court. In none of the three cited cases was there a similar occurrence. In each of the three cases cited by Appellant as support for her position, the plaintiff involved discovered or asserted the fraud after the entry of the decree. In this case, assuming for the purposes of this proceeding that fraud or breach of fiduciary duty occurred, these facts and claims were known to the Appellant and asserted by her as part of her complaints against the defendant in the divorce action before she entered into a settlement agreement which was accepted by the court.

In reality plaintiff's action is nothing more than an attempt to continue litigation against Dr. Despain which has been before this court on three occasions since the entry of the decree. Despain v. Despain, 610 P.2d 1303 (Utah 1980);

Despain v. Despain, 527 P.2d 525 (1981); and Despain v. Despain, (Case No. 18021), resolved by summary affirmance of the trial court on November 23, 1981. A clearer case for the application of res judicata could not be made. This was correctly recognized by the trial court who entered an appropriate order which should be affirmed by this court.

CONCLUSION

The Appellant in this action brings before the court allegations of fraud and breach of fiduciary duty which she raised initially in the second amended complaint filed in her divorce action against the Appellant. She updated the allegations with descriptions of events which she alleged occurred since the entry of the decree of divorce and the filing of her new action. The trial court correctly determined that inasmuch as the Appellant had alleged fraud and breach of fiduciary duty claims against the Respondent in the divorce action and that the limited partnership, Robert V. Despain's professional corporation and Robert V. Despain, were parties to the divorce settlement between the parties in the divorce action, the instant action was barred by the Doctrine of Res Judicata. Judge Banks determined that this action was merely an attempt to re-litigate those same issues and this court

having examined the same record should reach the same
conclusion and affirm the ruling by Judge Banks.

Respectfully submitted,



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CERTIFICATE OF MAILING

I hereby declare that I caused to be mailed a true and correct copy of the foregoing BRIEF OF RESPONDENT in Civil No. 18021, postage prepaid, this 24 day of August, 1982, to J. Thomas Greene and Bradley E. Morris, Attorneys for Appellant, at Suite 300, Kennecott Building, Salt Lake City, Utah 84133.

David S. Dolowitz
DAVID S. DOLOWITZ