

IN THE COURT OF APPEALS 10/29/96
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01069 COA

GAE LYNN ANDERSON

APPELLANT

v.

WILLIAM DWIGHT ANDERSON

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. DON GRIST

COURT FROM WHICH APPEALED: MARSHALL COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

JOE MORGAN WILSON

ATTORNEY FOR APPELLEE:

WILLIAM F. SCHNELLER

NATURE OF THE CASE: DOMESTIC - PAYMENT OF COLLEGE EXPENSES

TRIAL COURT DISPOSITION: RULING THAT ALL ISSUES BEFORE THE COURT WERE
RES JUDICATA

BEFORE BRIDGES, P.J., BARBER, DIAZ, AND MCMILLIN, JJ.

DIAZ, J., FOR THE COURT:

This appeal concerns a dispute between Gae Lynn Anderson (Gae Lynn) and William Dwight Anderson (William) over post-emancipation college expenses for their daughter, Jennifer Anderson. On November 1, 1994, Gae Lynn filed a petition to have the divorce decree construed to provide college education funds. Following a hearing, the trial judge ruled that the issue of college expenses was litigated in the 1992 decree and, thus, res judicata prevented relitigation of the issue. Feeling aggrieved, the Appellant appeals the trial court's judgment arguing that the issue of post-emancipation college expenses was never litigated in the previous decree and, consequently, the doctrine of res judicata is inapplicable. Finding error, we reverse.

FACTS

Gae Lynn and William were divorced on May 24, 1985. In pertinent part, the judgment provided as follows:

Mr. Anderson agrees to establish a college education fund for the children of the parties, and further agrees to maintain medical, dental and life insurance on the children of the parties.

On September 18, 1991, Gae Lynn filed a petition to enforce judgment of divorce and separation and to increase child support. A decree was entered June 29, 1992, increasing child support payments from \$300.00 per month to \$400.00 per month and alleging that all issues were agreed upon except attorney's fees.

Jennifer Anderson reached age twenty-one on July 14, 1994. At this time, Jennifer was attending nursing school in Memphis, Tennessee. William ceased all payments of child support and college expenses to Jennifer upon her twenty-first birthday. A petition was then filed on November 17, 1994, by Gae Lynn to have the divorce decree construed to provide college education funds. Following a hearing, the trial judge determined that the issue of college expenses had been previously litigated and that res judicata precluded the Appellant from bringing the action.

DISCUSSION

1. Did the Trial Court Err in Dismissing

the Petition Based on Res Judicata?

The Appellant argues that the chancellor committed error by dismissing her petition because the issue of college expenses was never addressed in the June 29, 1992 order. The Appellee counters that the June 29, 1992 order is silent regarding the payment of college expenses, but argues that the order referenced the payment of college expenses and, therefore, res judicata prevented the relitigation of the issue. The Appellee also contends that the subject of college expenses was raised in the pleadings and discovery. However, this information was not made a part of the record and, therefore, will not

be considered. *Martin v. McGraw*, 160 So. 2d 89, 90 (Miss. 1964).

The standard of appellate review is that the lower court's decision is affirmed unless the court was manifestly wrong, clearly erroneous, or an incorrect legal standard was applied. *Bell v. Parker*, 563 So. 2d 594, 596-97 (Miss. 1990).

To successfully apply the doctrine of res judicata, four identities must be present: (1) identity of the subject matter, (2) identity of the cause of action, (3) identity of the parties, and (4) identity of the quality or character of a person against whom a complaint is made. *Estate of Anderson v. Deposit Guar. Nat'l Bank*, 674 So. 2d 1254, 1255 (Miss. 1996) (citations omitted). If all of the above identities exist in the present action, the parties may not relitigate any issue which was tried or should have been tried in the previous lawsuit. *Johnson v. Howell*, 592 So. 2d 998, 1002 (Miss. 1991).

In our view, the previous cause of action did not involve the same issues as the present lawsuit. Although both causes of action involved the separation agreement, the record reveals that the order of June 29, 1992 did not contain any discussion of the payment of college expenses, nor did the parties identify the issue of college expenses as a pertinent issue. Furthermore, the order specifically states that "any issue not addressed shall remain in full force and effect until such time as it is modified by further order of this Court." We find that the order of June 29 expressly reserved the right to later litigate issues not addressed in the order.

Accordingly, the judgment of the lower court is reversed and remanded.

THE JUDGMENT OF THE MARSHALL COUNTY CHANCERY COURT IS HEREBY REVERSED AND REMANDED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLEE.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.