

15-0518

Hunter

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IN THE CIRCUIT COURT OF UPSHUR COUNTY, WEST VIRGINIA RECEIVED

APR 27 2015

PAMELA JEAN HAYES,

Plaintiff,

v.

Case No. 14-C-123
Cross Ref. Case No.
13-C-29
Jacob E. Reger, Judge

LARRY BRADY,
DAWNA MICHELLE BOONE BRADY,

Defendants.

ORDER GRANTING
MOTION TO DISMISS

On the 10th day of March, 2015, came the Plaintiff, Pamela Jean Hayes, in person and by counsel J. Burton Hunter, III, Esq., and the Defendants, Larry Brady and Dawna Michelle Boone Brady, in person and by counsel Trena Williams, Esq., upon the Defendant's Motion to Dismiss.

WHEREUPON, the Court considered the Motion and, following the arguments of the parties, took the matter under advisement. Upon due and mature consideration, and for the reasons more fully discussed herein, the Court is of the opinion and it is hereby **ORDERED** that the Defendant's Motion to Dismiss be **GRANTED** and the Plaintiff's Complaint be **DISMISSED** as the claims raised therein are barred by the doctrine of *res judicata*.

I. PROCEDURAL HISTORY

On March 6, 2013, the Plaintiff filed a *pro se* Complaint in Upshur County Civil Action No. 13-C-29. In her Complaint, the Plaintiff made reference to a right of way seemingly related to the Defendants' property. The Defendants, by and through counsel, filed an Answer and various motions to dismiss. The Plaintiff filed an Amended Complaint on July 11, 2013. The Defendants responded with an Amended Answer. The case proceeded to a scheduling conference and subsequently made its way through discovery and the pre-trial stages, a process that spanned approximately one year. During that time, the Plaintiff was an active participant in the various pretrial phases of the case.

On March 13, 2014, the Court held a hearing on the Defendants' Motion for Summary Judgment. The Plaintiff, continuing *pro se*, attended and participated. The Court ultimately did not grant summary judgment and permitted the matter to proceed to bench trial.

On March 20, 2014, the matter came before the Court for a bench trial. As she had done throughout the lifespan of Case No. 13-C-29, the Plaintiff proceeded without representation. The Court had taken the time to caution the Plaintiff of the challenges of navigating a trial without counsel. The Plaintiff acknowledged those challenges and elected to continue to present her case *pro se*.

During the bench trial, the Plaintiff presented the testimony of seven witnesses: Jeffrey A. Beane, the Plaintiff's ex son-in-law; Melissa Beane, the Plaintiff's daughter; Jessica Long, the Plaintiff's daughter; Andrew Long, the Plaintiff's son-in-law; Dianna Hess, a neighbor of the Defendants'; Pam Hayes, plaintiff; and Charles Pawlowski, a friend of the Plaintiff's.

While the Plaintiff successfully disclosed her pretrial witness list, she failed to disclose an exhibit list to the Defendants prior to trial and was therefore not permitted to introduce exhibits

during the bench trial. However, the Court took judicial notice of the deeds related to the properties at issue as they are located within the Upshur County Clerk's Office.

At the close of the Plaintiff's case-in-chief, the Defendant motioned for judgment as a matter of law, pursuant to Rule 52(c) of the West Virginia Rules of Civil Procedure. Upon due consideration, the Court found that the Plaintiff's claims could not be maintained as a matter of law and granted the Defendants' Motion.

Subsequently, the Plaintiff retained her current counsel and instituted the instant civil action.

II. RES JUDICATA

In their Motion to Dismiss, the Defendants aver that the Plaintiff's claims in the instant case should be barred by the doctrine of *res judicata*. The Plaintiff argues that the suit should not be barred because she was a *pro se* litigant at the time and was unfamiliar with the legal system.

Res judicata is defined as "[a]n affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been - but was not - raised in the first suit." Black's Law Dictionary, 7th Ed., 1999. *Res judicata* is a broad term that encompasses more specific theories, such as collateral estoppel, claim preclusion and issue preclusion. *See id.*

A. **Claims Related to Reservations in the Plaintiff's Chain of Title**

The legal theory of collateral estoppel is defined as "[a]n affirmative defense barring a party from relitigating an issue determined against that party in an earlier action, even if the second action differs significantly from the first one." *Id.*

Collateral estoppel will bar a claim if four conditions are met: (1) The issue previously decided is identical to the one presented in the action in question; (2) there is a final adjudication on the merits of the prior action; (3) the party against whom the doctrine is invoked was a party or in privity with a party to a prior

action; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Syl. Pt. 1, *State v. Miller*, 194 W. Va. 3, 6, 459 S.E.2d 114, 117 (1995).

In the instant case, it is undisputed that the issue the Plaintiff seeks to now litigate is identical to that which was presented in Case No. 13-C-29, specifically the issue of whether the Plaintiff has a right of way across the Defendant's property that was conveyed previously in the chain of title. It is undisputed that the matter was adjudicated on the merits at a bench trial on March 20, 2014 and a final order entered on September 29, 2014. It is undisputed that the Plaintiff was a party to Case No. 13-C-29.

The Plaintiff apparently disputes the fourth factor of the test for collateral estoppel, whether she had a full and fair opportunity to litigate the issue in Case No. 13-C-29 due to her status as a *pro se* litigant. In support of this argument, the Plaintiff, who is now assisted by counsel, argues that she did not know to subpoena witnesses, that she was unaware of some critical witnesses, that she did not know how to question those witnesses, that she did not know how to offer documentary evidence, and that she mistakenly pursued other legal theories at trial.

Indeed, “[t]he fundamental tenet that the rules of procedure should work to do substantial justice, however, commands that judges painstakingly strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules.” *Blair v. Maynard*, 174 W. Va. at 247, 252-53, 324 S.E.2d 391, at 396 (citations omitted).

[T]rial courts possess a discretionary range of control over parties and proceedings which will allow reasonable accommodations to *pro se* litigants without resultant prejudice to adverse parties. *Pro se* parties, like other litigants, should be provided the opportunity to have their cases ‘fully and fairly heard so far as such latitude is consistent with the just rights of any adverse party.’

Blair, 174 W. Va. at 252, 324 S.E.2d at 396 (1984) (quoting *Conservation Commission v. Price*, 193 Conn. 414, 479 A.2d 187, 192 n. 4 (1984)). However,

[T]he court must not overlook the rules to the prejudice of any party. The court should strive, however, to ensure that the diligent pro se party does not forfeit any substantial rights by inadvertent omission or mistake. Cases should be decided on the merits, and to that end, justice is served by reasonably accommodating all parties, whether represented by counsel or not. This ‘reasonable accommodation’ is purposed upon protecting the meaningful exercise of a litigant’s constitutional right of access to the courts. *Therefore, ultimately, the pro se litigant must bear the responsibility and accept the consequences of any mistakes and errors.*

Blair, 174 W. Va. at 253, S.E.2d at 396 (citations omitted) (emphasis added).

In the instant case, the Court took the necessary steps and made reasonable accommodations to ensure that the matter was adjudicated on the merits. The Plaintiff presented her case-in-chief at trial and attempted to establish that she was conveyed an easement over the Defendants’ property. The Court took judicial notice of the deeds associated with the Plaintiff’s chain of title. The Court cannot instruct the Plaintiff on what legal theories to pursue, what witnesses to call, or what questions to ask. The Plaintiff’s unfamiliarity with legal proceedings is a natural risk of proceeding without an attorney.

It is clear that the Plaintiff actively participated in the litigation of Case No. 13-C-29 for over a year and only sought to involve an attorney after she was unsuccessful at trial. To now subject the Defendants to the costs of litigating the same issue again would impose a considerably unfair burden. The Plaintiff should not be afforded a second bite at the apple.

Therefore, for the foregoing reasons, the Plaintiff’s Complaint in Case No. 14-C-123, insofar as it relates to the purported right of way conveyed in her chain of title, is *res judicata* and should be **DISMISSED**.

B. Claims Not Raised in the Complaint in Case No. 13-C-29

The Plaintiff also seeks to raise claims in the instant case of right of way by necessity and prescriptive easement related to the Defendant’s property. The Defendant avers that said claims

were not raised in the Complaint in Case No. 13-C-29 and should therefore be barred by the doctrine of *res judicata*.

The doctrine of *res judicata* will operate to bar a suit when three elements exist:

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.

Syl. Pt. 4, *Blake v. Charleston Area Med. Ctr., Inc.*, 201 W. Va. 469, 472, 498 S.E.2d 41, 44 (1997). “It is not essential that the matter should have been formally put in issue in a former suit, but it is sufficient that the status of the suit was such that the parties might have had the matter disposed of on its merits. An erroneous ruling of the court will not prevent the matter from being *res judicata*.”

In the instant case, there was a final adjudication on the merits in Case No. 13-C-29 and that this Court had jurisdiction of the proceedings. Additionally, the parties in the instant case are the same parties from Case No. 13-C-29. Finally, the cause of action in the instant case is such that it could have been resolved, had it been presented, in the prior action. The Plaintiff filed her Complaint and an Amended Complaint in Case No. 13-C-29, but the issues of right of way by necessity and prescriptive easement were not pled.

Therefore, for the foregoing reasons, the remainder of the Plaintiff’s Complaint in Case No. 14-C-123 is *res judicata* and should be **DISMISSED**.

III. RULE 60 MOTION FOR RELIEF FROM JUDGMENT

The Plaintiff’s Complaint first seeks to be granted relief from the judgment of the Court in Case No. 13-C-29, pursuant to Rule 60(b)(1)-(3). Rule 60(b) provides, in pertinent part, that,

“[o]n motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, excusable neglect, or unavoidable cause; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party. . . .”

The Plaintiff asserts that counsel for the Defendant falsely represented to the Court that the Wilsontown Road is a separate road from Salem Ridge Road. The Plaintiff alleges that, absent the allegedly false representation, the case would have turned in the Plaintiff’s favor. The Plaintiff also avers that the two roads purportedly being one in the same constitutes newly discovered evidence warranting relief from the judgment.

However, the Plaintiff’s argument loses sight of the forest for the trees. Whether the Wilsontown Road and the Salem Ridge Road are one in the same had no impact on the Court’s finding that the original attempted reservation in the deed from W.E. Boone and his wife to Robert Boone (DB 76/594) was insufficient as a matter of law. As this Court found in its Order Granting Judgment as a Matter of Law in Case No. 13-C-29, “[t]here is no mention in said deed of a Wilsontown Road or any presently existing road over the 50-acre plot conveyed to Robert Boone. Indeed, there was no mention of any other roads or even a beginning point or ending point of the right-of-way.” The first reference to *any* road in the connection with a reservation in the chain of title appears approximately sixty-six years later in the 1990 conveyance from Gary Samples to Glenn Samples. (DB 37/525).

Therefore, the Plaintiff’s Motion for Relief from Judgment, pursuant to Rule 60(b), should be denied **DENIED**. The Plaintiff’s objections and exceptions to the Court’s ruling are hereby noted for the record.

ACCORDINGLY, based upon the forgoing, it is hereby **ORDERED** the Plaintiff's Complaint be **DISMISSED**.

It is **ORDERED** that the Clerk of this Court mail and/or otherwise provide certified copies of this Order to all counsel and parties of record.

ENTERED this 24th day of April, 2015.

cc 4/24/15
J. Hunter
T. Williams



Jacob E. Reger
Circuit Court Judge

APR 24 2015
CLERK OF COURT
UPSHUR COUNTY, WEST VIRGINIA

TEST: A true copy from the records located in the office of the Clerk of the Circuit Court of Upshur County, West Virginia.

Given under my hand 4/24/15
BRIAN P. GAUDIN, CLERK
BY Melissa Stumeling
Deputy Clerk