Affirmed and Opinion filed October 19, 2000.

In The

Fourteenth Court of Appeals

NO. 14-99-00448-CV

IN THE INTEREST OF A.C. AND D.C., MINOR CHILDREN

On Appeal from the 310th District Court
Harris County, Texas
Trial Court Cause No. 98-41107

O P I N I O N

This is an appeal from an order dismissing, with prejudice, appellant's petition to establish paternity. In five points of error, appellant contends that: (1) sections 160.007(a)(1) and 160.110(f) of the Texas Family Code violate the Due Process Clause of the federal constitution; (2) sections 160.007(a)(1) and 160.110(f) of the Texas Family Code violate the Equal Protection Clause of the federal constitution; (3) sections 160.007(a)(1) and 160.110(f) of the Texas Family Code violate the Due Course of Law Provision of the Texas Constitution; (4) sections 160.007(a)(1) and 160.110(f) of the Texas Family Code violate the Equal Protection Clause of the Texas Constitution; and (5) sections 160.007(a)(1) and 160.110(f) of the Texas Family Code violate the Equal Rights Amendment of the Texas Constitution. We affirm.

Appellee, Natividad C., and Maria C. were married in June 1986 and were divorced in February 1994. While married to Natividad, Maria gave birth to four children: N.C. in 1987; D.M.C. in 1989;

D.C. in 1990; and A.C. in 1991. Appellant, Roman M., contends he is the biological father of the last two children, D.C. and A.C. However, because these children were born during his marriage to Maria, Natividad is the presumed father of all four children. *See* TEX. FAM. CODE ANN. § 151.002 (Vernon Supp. 2000). Additionally, each child carries his surname and Natividad is identified as the father on D.C.'s and A.C.'s birth certificates. The final decree of divorce, rendered in February of 1994, also states that Natividad is the parent of all four children. Additionally, the decree appoints Natvidad and Maria as the children's joint managing conservators.

Seeking access to D.C. and A.C., Roman filed a petition to establish paternity in 1996. In July of that year, the trial court dismissed appellant's petition with prejudice. The order of dismissal states: (1) the appellee lacks standing under the Texas Family Code; and (2) the suit is barred by the Texas Family Code. The order concludes by stating that any future suit brought by appellant attempting to establish paternity will be barred under the doctrine of res judicata. A dismissal with prejudice is a ruling on the merits to the extent that further assertion of appellant's claims is precluded by the doctrine of res judicata. *See Matthews Const. Co., Inc. v. Rosen*, 796 S.W.2d 692, 694 n. 2 (Tex. 1990); *Bell v. Moores*, 832 S.W.2d 749, 755 (Tex. App.—Houston [14th Dist.] 1992, writ denied). Roman did not appeal the dismissal, nor has he subsequently attempted to attack the validity or finality of the dismissal.

In November of 1997, Roman filed a bill of review attacking the finding in the 1994 divorce decree that Natividad is the father of D.C. and A.C. The trial court granted Roman's bill of review. The bill of review, however, fails to address Roman's 1996 petition to establish paternity. In 1998, Roman filed another petition to establish paternity. Natividad asserted the affirmative defense of res judicata in his first amended original answer. Natividad then filed a motion to dismiss, with prejudice, Roman's petition to establish paternity. The motion specifically requested that the court dismiss Roman's petition under the doctrine of res judicata. The trial court granted Natividad's motion to dismiss with prejudice, without stating the grounds for the dismissal. A reviewing court may treat an order of dismissal with prejudice as a summary judgment. *See Martin v. Dosohs I, Ltd., Inc.*, 2 S.W.3d 350, 353 (Tex. App.—San Antonio 1999, no pet.); *Dearing v. Johnson*, 947 S.W.2d 641, 644 (Tex. App.—Texarkana 1997, no pet.). Thus, an appellate court may review and affirm an order of dismissal with prejudice on any ground presented to the trial court if the trial court fails to specify the grounds for dismissal. *See Weiner*

v. Wasson, 900 S.W.2d 316, 317 n.2 (Tex. 1995); *Carr v. Brasher*, 776 S.W.2d 567, 569 (Tex. 1989).

Roman wholly ignores the dispositive issue of res judicata. The doctrine of res judicata bars relitigation of claims that have been fully adjudicated, or that arise out of the same subject matter and could have been litigated in the prior action. *See Barr v. Resolution Trust Corp. ex rel. Sunbelt Federal Sav.*, 837 S.W.2d 627, 628 (Tex. 1992). "When a question of fact or law is put in issue and the court renders a final judgment on a ground of recovery or defense, there can be no subsequent suit on the same issues, whether the second suit is for the same, or a different cause of action." *Fite v. King*, 718 S.W.2d 345, 347 (Tex. App.—Dallas 1986, writ ref'd n.r.e.). The elements of res judicata are: (1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action. *See Mayes v. Stewart*, 11 S.W.3d 440, 449 (Tex. App.—Houston [14th Dist.] 2000, pet. denied). Natividad presented the trial court with evidence that satisfied each element of the doctrine of res judicata. The trial court's initial determination, in 1996, that Roman lacked standing to pursue a suit to establish paternity and that his suit was barred by the Texas Family Code constitutes an insuperable barrier to Roman's subsequent attempt to assert paternity.

The disposition of this appeal is controlled by the doctrine of res judicata. It is unnecessary to address Roman's federal and state constitutional challenges to sections 160.007(a)(1) and 160.110(f) of the Texas Family Code. Because Roman is barred from re-re-litigating the issue of paternity, his five points of error are overruled. The trial court's order of dismissal is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 19, 2000.

Panel consists of Chief Justice Murphy and Justices Hudson and Wittig.

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