

## COURT OF APPEALS

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Diane M. Stumph,

Appellant,

Case No.: 21-AC-013

v.

Date: December 6, 2021

Terry R. Jordan,

Respondent.

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### INITIAL REVIEW DECISION

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This matter has come before Appellate Judges, Chad Hendricks, Diane House, and Michele Doxtator.

#### BACKGROUND

On November 5, 2021, Diane M. Stumph (hereinafter “Stumph”) filed a Notice of Appeal with this Court. Stumph is appealing the Amended Divorce Judgment of the Oneida Family Court (hereinafter “OFC”) dated October 6, 2021 in case number 18-DI-014, wherein the OFC issued a final order dividing property and debt between her and the Respondent, Terry R. Jordan (hereinafter “Jordan”), and denied Stumph’s request for maintenance. Stumph claims the judgment is in error because it is based in large part on the OFC’s prior ruling that the parties prenuptial agreement is inequitable and was not used in determining property and debt division.

On June 5, 2020, a contested hearing was held in the OFC between Jordan and Stumph to determine whether a prenuptial agreement will govern the disposition of property in the pending divorce. In a written order dated June 10, 2020, the OFC held the prenuptial agreement was inequitable and would not be used in determining the disposition of property. Stumph appealed the decision of the OFC to set aside the prenuptial agreement on July 9, 2020, which we accepted for review. In her appeal, Stumph requested that we reverse the OFC’s decision to set aside the prenuptial agreement.

On September 28, 2020, the date her Appellant's Brief was due, Stumph's attorney filed a Motion to Extend Time to File Brief to September 30, 2020. We granted this extension. On September 30, 2020, Stumph's attorney filed a second motion for an extension to file a brief for an October 1, 2020 due date. We again granted this extension. On October 1, 2020 at 4:50 p.m. Stumph submitted a third motion for an extension of time to file the Appellant's Brief. The normal business hours of the Oneida Judiciary are 8:00 a.m. to 4:30 p.m. Because Stumph had not filed a brief or submitted a motion for extension of time to file a brief by the close of business on October 1, 2020, Stumph's third Motion to Extend Time to File a Brief was denied.

Jordan's attorney subsequently filed a Motion to Dismiss the appeal on October 5, 2020 for failure to prosecute. We granted Jordan's Motion to Dismiss on October 6, 2020 and remanded the case back to the OFC for further proceedings.

#### ANALYSIS

This case requires us to consider the doctrine of issue preclusion. Issue preclusion prohibits relitigation of factual or legal issues that have been decided in earlier litigation between the same parties. *See, Michelle T. v. Crozier*, 173 Wis.2d 681, 687 (1993). When determining whether to apply the doctrine of issue preclusion, the court must determine whether the issue was actually litigated and determined in the prior proceeding by a valid judgment in a previous action. *Estate of Rille v. Physicians Ins. Co.*, 300 Wis.2d 1 (2007). If this first step is satisfied, the court must next determine whether the litigants were parties in the prior proceeding. *Paige K.B. v. Steven G.B.*, 226 Wis.2d 210, 224 (1999). The final step requires the court to consider principles of fundamental fairness. *Michelle T.* at 698. When determining fundamental fairness, the court may consider some or all of the following factors in deciding whether issue preclusion is equitable in a particular case:

1. Could the party against whom preclusion is sought have obtained a review of the judgment;
2. Is the question one of law that involves two distinct claims or intervening contextual shifts in the law;
3. Do significant differences in the quality or extensiveness of proceedings between the two courts warrant relitigation of the issue;
4. Have the burdens of persuasion shifted such that a party seeking preclusion had a lower burden of persuasion in the first trial than in the second; or
5. Are matters of public policy and individual circumstances involved that would render the application of issue preclusion to be fundamentally unfair. *Id.* at 689.

Issue preclusion is applicable here because the issue of whether the parties' prenuptial agreement is inequitable was contested in divorce proceedings held between Jordan and Stumph on June 5, 2020.

Turning to the first factor of fundamental fairness, Stumph appealed the OFC's ruling that held the prenuptial agreement was inequitable and would be set aside in determining property and debt division. After we accepted Stumph's appeal for review, she failed to file an Appellant's Brief. Subsequently Jordan filed for a Motion to Dismiss for failure to prosecute, which we granted. Second, Stumph's claims that the OFC's ruling that held the prenuptial agreement inequitable was in error are the exact same in her July 9, 2020 appeal and in the present appeal. Since both Stumph's appeals from July 9, 2020, and November 5, 2021, arise from the same divorce proceeding involving the same parties, the third and fourth factors do not apply. Finally, matters of public policy and individual circumstances do not render the application of issue preclusion to be fundamentally unfair in this instance. Stumph had an opportunity to present her evidence at the contested hearing held on June 5, 2020. After carefully considering all of the factors outlined in *Button v. Button*, 131 Wis.2d 84 (1986), the OFC held the prenuptial agreement was inequitable.

Stumph also argues that she was denied due process when she was not allowed to introduce further evidence or arguments concerning the prenuptial agreement. Again, the sole purpose of the hearing on June 5, 2020 was to decide whether the prenuptial agreement was inequitable. Once this issue was ruled on and the OFC issued a final order, the exact same issue could not be relitigated during the divorce proceedings. Stumph tries to argue that the OFC made a separate ruling in its Amended Divorce Judgment on October 6, 2021 where in footnote 3 of the Order the judge stated: "the court does not believe that the parties were barred from challenging the agreement prior to the entry of the divorce judgment." Although not entirely clear, it appears Stumph understands footnote 3 to suggest the parties could have relitigated the fairness of the prenuptial agreement at the final hearing held on August 6, 2021. We disagree. The OFC clearly states in its Findings of Fact that on June 10, 2020 and in accordance with 8 O.C. 801.2-6, it found the prenuptial agreement was inequitable and set it aside. Furthermore, the OFC in footnote 3 simply reiterates that the parties were not barred from challenging the prenuptial agreement prior to the entry of the OFC's June 10, 2020, Decision and Order pertaining to the prenuptial agreement.

After analyzing the factors of fundamental fairness, issue preclusion bars Stumph from relitigating the issue of whether the prenuptial agreement was equitable. This issue was conclusively decided during a contested hearing between Stumph and Jordan on June 5, 2020. Accordingly, the OFC did not err when it set aside the prenuptial agreement in determining property and debt division and denied maintenance in its Amended Divorce Judgment dated October 6, 2021.

#### DECISION

After reviewing the information contained in the Notice of Appeal, and the OFC's Final Order, it is determined that Stumph has not sufficiently alleged that the OFC's decision:

1. Violates applicable provisions of the Constitution;
2. Violates provisions, substantive or procedural, of applicable Oneida law or applicable federal law;
3. Is an administrative decision that was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or
4. Is not supported by substantial evidence on the record taken as a whole.

For the reasons set forth above, this appeal is DENIED for appellate review.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this appeal is denied for review. Dated this 6th day of December 2021, in the matter of Case No. 21-AC-013, *Diane M. Stumph v. Terry R. Jordan*.

***It is so ordered.***