Circuit Court for Prince George's County
Case No. CAD05-20561

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3367

September Term, 2018

SHARON FOLSE

v.

THOMAS FOLSE

Fader, C.J.,
Leahy,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: April 16, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Sharon Folse, the appellant, and Thomas Folse, the appellee, were divorced in 2006 pursuant to a decree that incorporated, but did not merge, a marital settlement agreement. In 2008, 2009, and 2013, Ms. Folse sought relief in the divorce action based on allegations that Mr. Folse had failed to comply with terms of the marital settlement agreement related to the parties' former marital home. The Circuit Court for Prince George's County rejected her claims in all three of those proceedings. In 2018, Ms. Folse filed two more motions premised largely on the same contentions relating to the marital settlement agreement and the former marital home. The circuit court denied her motions, ruling that they were barred by res judicata. On appeal, Ms. Folse contends that ruling was in error.[1]

With one exception, we agree that Ms. Folse's claims are barred. The exception concerns Ms. Folse's contention that Mr. Folse improperly encumbered the former marital home by taking out a home equity line of credit in 2015. However, we nonetheless will affirm the denial of that aspect of her claims on the ground that it was not properly raised by motions filed within the parties' divorce action. Any further requests for relief related to Ms. Folse's alleged interest in the former marital home must be initiated by a complaint. As a result, we will affirm the circuit court's judgment.

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[1] Ms. Folse identifies six issues in her appellate brief, all of which ultimately come down to whether the court erred in applying res judicata to her latest filings. The issues, as she separately identifies them, include whether the court erred in: (1) ruling without holding a hearing; (2) applying res judicata to past judgments that were not on the merits or fully litigated; (3) failing to apply "the evidence test and transaction test"; (4) "not considering the Doctrine of Ripeness and Unenforceability"; (5) ruling "when it may [] not [have] had jurisdiction due to errors in service"; and (6) ruling even though the parties' settlement agreement was silent as to what would happen if a party were unable to comply with the agreement.

BACKGROUND

Ms. and Mr. Folse began dating in 1984 and were married on April 30, 1989. A few months before their marriage, Mr. Folse purchased a townhome in Laurel, Maryland (the "Laurel Property"), titled and secured by a mortgage in his name only. Although the parties lived together in the townhouse before and during their marriage, title to the home and mortgage has at all relevant times remained solely in Mr. Folse's name.

On July 24, 2006, the parties, through their attorneys, entered into a property settlement agreement (the "Agreement"), and on August 25, 2006, the court signed and entered a judgment of absolute divorce, which incorporated, but did not merge, the Agreement. The Agreement, which is two pages long and contains many crossed-out sections and handwritten changes, provides the following regarding the Laurel Property:

> Laurel Home: Sharon will buy Tom's one-half interest in the property. Sharon will pay the existing loan at settlement. The balance is $24,370. Payment to Tome [sic] shall be $112,815.00. Payment to be made within 90 days; funds to come from cash out refinance by Sharon. Tom will execute a Quit Claim Deed at Closing transferring property to Sharon as part of refinance.

The Agreement also provided that Ms. Folse would receive $750 per month in alimony for two years following her refinancing of the Laurel Property, but that the alimony obligation would be reduced by the amount of any mortgage payments, condominium fees, and real property taxes that Mr. Folse paid on the property before transferring it.

Ms. Folse never obtained refinancing for the Laurel Property nor otherwise tendered Mr. Folse the required sum to complete the buy-out transaction. She did, however, buy

and move into another home in August 2007. According to Ms. Folse, the Laurel Property has remained unoccupied.

Since the entry of the divorce decree, Ms. Folse has initiated four different proceedings in an attempt to secure some benefit from the Laurel Property. We will review each in turn.

The 2008 Petition

In April 2008, Ms. Folse filed a petition for contempt against Mr. Folse, alleging that he had breached the Agreement by failing to cooperate in the sale of the Laurel Property to a third party. Ms. Folse claimed that she was unable to refinance the property because of her modest income level, lack of prior real property ownership, and lack of ownership of the Laurel Property. She claimed that in August 2007, she attempted to sell the property instead, but that Mr. Folse refused to participate in closing, unilaterally changed the locks on the home, and refused her access to show the home to other potential buyers. Ms. Folse argued that Mr. Folse's refusal to cooperate prevented her from receiving her equity in the property and her alimony award. Ms. Folse sought a show cause order as to why Mr. Folse had refused to cooperate in selling the property.

The court scheduled a hearing on Ms. Folse's petition on September 16, 2008. When, at the outset of the hearing, the court asked if Ms. Folse intended to proceed, her attorney advised the court that Ms. Folse "does not feel prepared to go forward . . . this morning." After some back-and-forth, the court asked again whether Ms. Folse was "going forward or not." Ms. Folse answered, "At this point maybe we can refile it elsewhere." After Ms. Folse told the court that she would not withdraw her motion, the court asked her

to call her first witness. Ms. Folse stated, "We have no witnesses. I'm not prepared. My attorney did not prepare me." The court dismissed her petition.

The 2009 Petition

In January 2009, Ms. Folse, now self-represented, filed a second petition for contempt against Mr. Folse. She raised the same general allegations as in her 2008 petition and again sought a show cause order as to why Mr. Folse had refused to cooperate in selling the Laurel Property. Ms. Folse also asked the court to: (1) order Mr. Folse to buy out her interest in the Laurel Property, (2) appoint a trustee to sell the property and have the proceeds split "50/50," or (3) order Mr. Folse to allow her to show the property to prospective buyers. Mr. Folse moved to dismiss her petition based on res judicata.

In a hearing held in July 2009, Ms. Folse asserted that she was unable to refinance because she was unemployed, had a poor credit history due to a recent serious car accident that left her with large medical bills, and had no prior history of real estate ownership. She stated that she had made a good faith effort to find prospective buyers for the property, but claimed that Mr. Folse was uncooperative. She asked the court to resolve the property dispute either by appointing a neutral party to sell the property or by ordering the matter to mediation.

Mr. Folse asserted that he could not be held in contempt for refusing to cooperate in selling the property because the Agreement did not require him to do so. Instead, he argued, Ms. Folse had not performed under the Agreement by failing to refinance the house and buy out Mr. Folse's equity interest within 90 days of the divorce. The court agreed

with Mr. Folse on the merits and denied Ms. Folse's contempt petition on the ground that she had not performed as required under the Agreement.

The 2013 Motion

In March 2013, almost seven years after the judgment of divorce, Ms. Folse filed a motion to modify the decree. She again asserted that despite many good faith efforts to refinance and to find a buyer, she had been unable to do either, and that Mr. Folse had thwarted her efforts to sell the home to a third party. She also maintained that "[f]raudulent practices were done through out [sic] the deliberation of the divorce decree and afterwards preventing any and all chances for [her] to acquire what was stipulated in the divorce decree." As relief, she asked the court to modify the divorce decree, impose a new division of all the "marital property from date of marriage till date of divorce," and to award her back child support and alimony. (Emphasis removed).

Mr. Folse opposed the motion, asserting that it should be dismissed based on the doctrine of res judicata and that the divorce decree—which had been entered seven years earlier—could not be modified absent extrinsic fraud, which Ms. Folse had not alleged. Following a hearing, the court ruled that it lacked authority to modify the divorce decree and so denied the motion. Ms. Folse appealed this decision, but this Court dismissed her appeal because it was untimely filed.

The 2018 Motions

In October 2018, 12 years after entry of the divorce decree, Ms. Folse filed two additional motions: (1) a motion for "Breach of Fiduciary Duty Under Constructive

Trust”;[2] and (2) a “Supplemental Motion to Enforce the Property Agreement Through Sale In Lieu of Partition or in the Alternative a Monetary Judgment.”[3] In both motions, Ms. Folse reiterated her prior allegations regarding Mr. Folse’s lack of cooperation in her attempts to sell the Laurel Property and his allegedly fraudulent actions in securing the Agreement. In the motion for breach of fiduciary duty, Ms. Folse contended that Mr. Folse had a fiduciary duty under the Agreement to cooperate with her in the sale of the Laurel Property, and that she was entitled to enforcement of that obligation through imposition of a constructive trust. In the alternative, she asked that the Agreement “be turned around and redone,” and that the court “step in and put the house for sale and divide the proceeds based on equitable distribution under Maryland law.”

In the supplemental motion to enforce the property agreement, Ms. Folse “petition[ed] the court to order a sale in lieu of partitioning the marital home which was never resolved per the agreement incorporated into the divorce decree of August 25, 2006.” In addition to the arguments supporting her earlier petitions and motion, Ms. Folse asserted

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[2] A constructive trust “is an equitable remedy, not a cause of action in itself.” *Chassels v. Krepps*, 235 Md. App. 1, 15 (2017). “The constructive trust . . . is a remedy for unjust enrichment.” *Wash. Suburban Sanitary Comm’n v. Utilities, Inc. of Md.*, 365 Md. 1, 39 (2001) (quoting 1 Dobbs, *Law of Remedies* § 4.3(2), at 597 (1993)). A constructive trust may be appropriate “where property was acquired through an improper method or a breach of a confidential relationship, or where there is a ‘higher equitable call’ on that property by the complaining party.” *Chassels*, 235 Md. App. at 15-16 (internal citation omitted) (quoting *Starleper v. Hamilton*, 106 Md. App. 632, 640 (1995)).

[3] Around this time, Ms. Folse also filed in the circuit court a paper titled “Complaint for Partition of Real Property.” However, the document is more accurately construed as a request for a sale in lieu of partition and a division of the proceeds. In that complaint, Ms. Folse alleged that Mr. Folse had dissipated the value of the Laurel Property by securing a home equity line of credit. That complaint is not before us in this appeal.

that Mr. Folse had dissipated the Laurel Property by taking out a $112,000 home equity line of credit in 2015. Her supplemental motion requested that the court either (1) void the Agreement, (2) order a partition of the home "to enforce the current property agreement," or, in lieu of those options, (3) enter "a money judgment" in her favor. She also sought sanctions against Mr. Folse for dissipating the Laurel Property.

Mr. Folse moved to dismiss or deny the motions, alleging that the contractual and equitable claims were barred by res judicata. Following a hearing, the court entered a written order denying Ms. Folse's motions based on the doctrine of res judicata. The court stated that Ms. Folse's prior complaints and current motions all sought the same outcome, "to change ownership of the mar[it]al townhome." It is from this denial that Ms. Folse appeals.[4]

DISCUSSION

"In reviewing a trial court's finding of fact, we do 'not substitute our judgment for that of the lower court unless it was clearly erroneous' and give due consideration to the trial court's 'opportunity to observe the demeanor of the witnesses, to judge their credibility and to pass upon the weight to be given their testimony.'" *Jones v. Rosenberg*, 178 Md. App. 54, 68 (2008) (quoting *Young v. Young*, 37 Md. App. 211, 220 (1977)). "A factual finding is clearly erroneous if there is no competent material evidence in the record to support it." *Tshiani v. Tshiani*, 208 Md. App. 43, 51 (2012), *aff'd*, 436 Md. 255 (2013). On the other hand, "[q]uestions of law decided by the trial court are subject to a de novo

[4] In the same order, the circuit court granted Ms. Folse's motion to enforce a qualified domestic relations order. That portion of the court's order is not at issue here.

standard of review." *Jones*, 178 Md. App. at 68 (citing *Liddy v. Lamone*, 398 Md. 233, 246-47 (2007)).

"[A]n appellate court will affirm a circuit court's judgment on any ground adequately shown by the record, even one upon which the circuit court has not relied or one that the parties have not raised." *Monarc Constr. v. Aris Corp.*, 188 Md. App. 377, 385 (2009) (internal citation omitted) (quoting *Pope v. Bd. of Sch. Comm'rs*, 106 Md. App. 578, 591 (1995)). Therefore, "it is within our province to affirm the trial court if it reached the right result for the wrong reasons." *Id.*

Ms. Folse argues that the circuit court erred when it held that her motions were barred by the doctrine of res judicata. We agree with the circuit court that all but one of Ms. Folse's claims are barred because they seek to relitigate issues that were previously decided against her, although we conclude that collateral estoppel is the more applicable doctrine. We further conclude that the one issue that is not barred—her contention that in 2015 Mr. Folse improperly encumbered an asset in which she holds an equitable interest—was not properly raised by motions in the parties' divorce action. Accordingly, we will affirm the circuit court's judgment.

> Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that "is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit."

Powell v. Breslin, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)). The purpose of the doctrine is to "restrain[] a party from litigating the same claim repeatedly and ensure[] that courts do not waste time adjudicating matters which have been

decided or *could have been* decided fully and fairly." *Anne Arundel County Bd. of Ed. v. Norville*, 390 Md. 93, 107 (2005). Res judicata precludes relitigation of a claim if three elements are met: "(1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action." *Powell*, 430 Md. at 63-64.

When a court has entered a final judgment on a matter that a party seeks to litigate in a subsequent proceeding, the second element of res judicata "is usually uncomplicated." *Norville*, 390 Md. at 108. When a court has not ruled upon a matter directly, however, the analysis becomes more complex, "for then the second court must determine whether the matter currently before it was fairly included within the claim or action that was before the earlier court and could have been resolved in that court." *Id.* (quoting *FWB Bank v. Richman*, 354 Md. 472, 493 (1999)). "To make that determination, Maryland courts have adopted the transactional test, i.e., 'if the two clams or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously.'" *Heit v. Stansbury*, 215 Md. App. 550, 566 (2013) (quoting *Norville*, 390 Md. at 109).

In applying the transactional test,

> [w]hat factual grouping constitutes a "transaction" and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Norville, 390 Md. at 109 (quoting *FWB Bank*, 354 Md. at 493).

With respect to legal theories, "[e]ven if 'a number of different legal theories casting liability on an actor may apply to a given episode, [they do] not create . . . multiple claims' depriving a prior judgment of its preclusive bar." *Norville*, 390 Md. at 110 (quoting *Lockett v. West*, 914 F. Supp. 1229, 1233 (D. Md. 1995)). Indeed, "[o]nce a set of facts has been litigated, res judicata generally prevents the application of a different legal theory to that same set of facts, assuming that 'the second theory of liability existed when the first action was litigated.'" *Norville*, 390 Md. at 111 (quoting *Gertz v. Anne Arundel County*, 339 Md. 261, 270 (1995)).

Collateral estoppel, or issue preclusion, is a related but distinct doctrine. Under collateral estoppel, "[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim." *Bank of N.Y. Mellon v. Georg*, 456 Md. 616, 626 (2017) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 387 (2000)). Unlike res judicata, which "is a final bar to any suit upon the same cause of action," including issues that were or "could have been litigated in the original suit," *Lizzi v. Wash. Metro. Area Transit Auth.*, 384 Md. 199, 207 (2004) (quoting *Alvey*, 225 Md. at 390), collateral estoppel precludes a party from litigating only the specific issues that were actually decided in the prior action.

The four-part test for the application of collateral estoppel is:

> 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
>
> 2. Was there a final judgment on the merits?
>
> 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
>
> 4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Colandrea, 361 Md. at 391 (quoting *Wash. Suburban Sanitary Comm'n v. TKU Assocs.*, 281 Md. 1, 18-19 (1977)).

The Court of Appeals has explained the relationship between res judicata and collateral estoppel as follows:

> Collateral estoppel is concerned with the issue implications of the earlier litigation of a different case, while res judicata is concerned with the legal consequences of a judgment entered earlier in the same cause. The two doctrines are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised.

Georg, 456 Md. at 626 (quoting *Colandrea*, 361 Md. at 391).

The circuit court applied res judicata to Ms. Folse's 2018 filings. With respect to at least some of Ms. Folse's current claims, however, we conclude that collateral estoppel is the more applicable doctrine. The 2008 and 2009 petitions both sought to hold Mr. Folse in contempt for violating the divorce decree. The 2013 motion sought to modify the Agreement. Each of those filings initiated a discrete proceeding within the parties' divorce action in which Ms. Folse sought relief specific to the enforcement or modification of the divorce decree entered by the court. Such a proceeding would not ordinarily be afforded broad preclusive effect beyond the scope of the contempt and modification claims it

addressed. In her 2018 motions, Ms. Folse brought somewhat broader claims, although still within the parties' divorce action. Those new claims constitute the same "cause of action"—and so meet the second factor for application of res judicata—only to the extent that they seek (1) to hold Mr. Folse in contempt for breaching the Agreement or (2) a modification of the divorce decree.

The prior proceedings did, however, resolve conclusively most of the issues that are at the core of the claims Ms. Folse raised in her 2018 motions, including:

> (1) In the 2009 proceeding, the court decided that Ms. Folse had not complied with her contractual obligations under the Agreement with respect to the disposition of the Laurel Property, because she did not buy out Mr. Folse's interest within 90 days of the divorce decree;
>
> (2) In the 2009 proceeding, the court also decided that the Agreement did not impose on Mr. Folse an obligation to cooperate with Ms. Folse's efforts to sell the property to a third party and, therefore, that his lack of cooperation in that regard did not constitute a breach of the Agreement; and
>
> (3) In the 2013 proceeding, the court determined that the divorce decree into which the Agreement was merged was not subject to modification by the Court, because (a) more than 90 days had passed since the decree was entered; and (b) Ms. Folse had not alleged fraud, mistake, or irregularity for purposes of Rule 2-535(b).

As to the first prong of collateral estoppel, each of these issues has been previously decided.

We conclude that the remaining prongs of the collateral estoppel test have also been met. Regarding the second prong, in 2009, the circuit court issued a final judgment on the merits denying Ms. Folse's petition to hold Mr. Folse in contempt; and in 2013, the court issued a final judgment on the merits denying her motion to modify the Agreement. Those rulings were final judgments because with respect to the claims raised, they were "unqualified, final disposition[s] of the matter[s] in controversy." *Addison v. Lochearn*

Nursing Home, LLC, 411 Md. 251, 262 (2009) (quoting *Gruber v. Gruber*, 369 Md. 540, 546 (2002)). Regarding the third prong, Ms. Folse was a party to those prior proceedings and to the current proceeding. Regarding the fourth prong, Ms. Folse was given a fair opportunity to be heard in both the 2009 and 2013 proceedings.[5]

In reviewing Ms. Folse's 2018 motions, we conclude that, with one exception, the issues she raises and the relief she seeks are barred by collateral estoppel. As summarized above, Ms. Folse's 2018 motions largely seek to relitigate issues that were previously decided against her. As a result of the prior proceedings, Ms. Folse is barred by res judicata and/or collateral estoppel from pursuing any claims premised on her contentions that (1) the Agreement obligates Mr. Folse to sell the Laurel Property to a third party or to cooperate with Ms. Folse in the sale of that property to a third party, (2) Mr. Folse is subject to contempt sanctions for refusing to cooperate with Ms. Folse in selling the property to a third party, or (3) the Agreement is subject to modification by the court (other than pursuant to Rule 2-535(b) based on allegations not previously adjudicated).

The only issue raised in Ms. Folse's 2018 motions that is not barred by collateral estoppel or res judicata is her claim that Mr. Folse improperly encumbered the Laurel Property in 2015. None of the prior proceedings, the last of which concluded in 2013, addressed or decided that issue. Mr. Folse argues that Ms. Folse's claims relating to the

[5] We would not necessarily conclude that Ms. Folse was given a fair opportunity to be heard in the 2008 proceeding. In 2009, however, the court addressed her second petition for contempt on the merits and provided her with a full opportunity to be heard. As a result, any failure to afford that opportunity concerning the 2008 petition was later rectified. For present purposes, we do not consider the 2008 petition to provide a basis for application of res judicata or collateral estoppel.

2015 home equity line of credit nonetheless are barred because her "dissipation claim is fully dependent on the proposition that she had a cognizable interest in the Marital Home, a fact that was previously adjudicated against her." He contends that when the court ruled on Ms. Folse's prior motions—and declined to order Mr. Folse to sell the marital home or appoint a third party to do so—the court necessarily determined that she had no remaining interest in the property.

If we agreed with Mr. Folse that any of the prior rulings had decided that Ms. Folse lacked a cognizable interest in the Laurel Property, then we would also agree that any assertion that Mr. Folse had improperly encumbered the property would be barred. However, none of the prior rulings reached that issue, either explicitly or implicitly. Mr. Folse observes correctly that in ruling on Ms. Folse's 2009 motion, the court determined that she had failed to fulfill her obligation under the Agreement to buy out Mr. Folse within 90 days of entry of the divorce decree. But the only consequence the court attached to that failure was that the Agreement did not impose any contractual obligation on Mr. Folse to cooperate with Ms. Folse's efforts to sell the Laurel Property to a third party. The court did not conclude that Ms. Folse had no remaining interest in the property. To the contrary, at one point during the argument on the 2009 petition, after Mr. Folse's attorney stated that Ms. Folse had breached the Agreement, Ms. Folse asserted "that does not mean that I lost everything." The court responded, "No it doesn't. . . . It just means that getting what you need might be a more convoluted process."

Similarly, the court's ruling in 2013 that it lacked the authority to modify the terms of the Agreement did not resolve whether Ms. Folse had any equitable interest in the property. That is an issue that has not yet been litigated or ruled upon by any court.

Although Ms. Folse's contentions premised on Mr. Folse's 2015 conduct are not barred by res judicata or collateral estoppel, we nonetheless conclude that the circuit court was correct to deny the 2018 motions in their entirety. As we have discussed, the prior proceedings brought by Ms. Folse have already established that any remedy she might have with respect to the Laurel Property does not lie in the enforcement or modification of the Agreement or the divorce decree. Thus, if she maintains an interest in the Laurel Property that can be adjudicated separate and apart from her claims for enforcement of the Agreement or the divorce decree—an issue that we do not decide—any claims in furtherance of that interest must be pleaded in a new complaint, not a motion filed in the parties' divorce action.[6] Accordingly, we will affirm the circuit court's denial of the motions.[7]

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY

[6] We express no opinion on the validity of Ms. Folse's claim that Mr. Folse improperly encumbered the Laurel Property, nor on her underlying contention that she possesses an equitable interest in the Laurel Property. We also observe that the fact that Ms. Folse is barred by collateral estoppel from bringing a claim that the Agreement obligates Mr. Folse to cooperate with her in the sale of the Laurel Property does not mean that she is precluded from referencing the Agreement or its provisions in connection with her claim that she maintains an equitable interest in the property.

[7] Ms. Folse also argues that the circuit court erred in not holding a hearing on the merits prior to rendering its decision on her motions. However, the court did hold a hearing. Once the court determined that Ms. Folse's motions were not properly before it, the court denied the motions. No further hearing was required.

AFFIRMED. COSTS TO BE PAID BY APPELLANT.