

STATE OF LOUISIANA

NO. 19-CA-422

VERSUS

FIFTH CIRCUIT

DEXTER DEMOND JOHNSON

COURT OF APPEAL

STATE OF LOUISIANA

ON APPEAL FROM THE TWENTY-NINTH JUDICIAL DISTRICT COURT
PARISH OF ST. CHARLES, STATE OF LOUISIANA
NO. 80,290, DIVISION "E"
HONORABLE TIMOTHY S. MARCEL, JUDGE PRESIDING

January 29, 2020

JOHN J. MOLAISSON, JR.
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Stephen J. Windhorst, and John J. Molaison, Jr.

AFFIRMED

JJM

FHW

SJW

COUNSEL FOR PLAINTIFF/APPELLEE,
STATE OF LOUISIANA

Joel T. Chaisson, II
Louis G. Authement

COUNSEL FOR DEFENDANT/APPELLANT,
DEXTER DEMOND JOHNSON

Dexter Johnson

MOLAISON, J.

In this action pertaining to the annulment of a child support calculation, appellant, Dexter Johnson, appeals the trial court's grant of the State's exception of *res judicata*. For the reasons that follow, we affirm.

FACTS AND PROCEDURAL HISTORY

On August 10, 2015, the St. Charles Parish District Attorney's Office ("the State") filed a petition to establish paternity and support obligation that alleged appellant was the natural/biological father of P.C.,¹ who was born on April 9, 2015. On July 14, 2016, an attachment was issued for appellant's arrest for "contempt in neglecting or refusing to attend" a hearing on the petition to establish paternity and support obligation. The State and appellant filed a joint motion and order for genetic testing on October 20, 2016. On January 19, 2017, appellant stipulated to the results of DNA testing that established he was the father of P.C.

A hearing on the petition to establish paternity and child support obligation was held on February 16, 2017. The transcript from the hearing shows that defendant was unrepresented but did not object to the hearing on that basis. Persephone Washington, employed by the Child Support Enforcement Division of the Louisiana Department of Children and Family Services, testified regarding the variables she used to complete a Louisiana Obligation Worksheet. Part of that calculation was allowing a credit for child care costs to P.C.'s mother, who was the custodial parent, in the amount of \$467 per month.² With respect to P.C.'s childcare costs, appellant stated at the hearing:

¹ Pursuant to Rules 5–1 and 5–2 of the Uniform Rules—Courts of Appeal, the initials of the minor involved will be used to protect the child's identity.

² State's Exhibit 2, which was introduced into the record at the hearing without objection, was identified as daycare information for P.C. from "Angels Among Us Daycare." The letter, signed by Director Stacy Engel, read in its entirety:

This letter is to inform you that [P.C.] has been attending Angels Among Us Daycare since October 12, 2015. Laura Cummings has been the provider for paying tuition of \$130 per week from October 12, 2015 til April 1, 2016. From April 1, 2016 til present day

THE DEFENDANT:

I pay child care costs for my other kids. And I offered to pay the child care, but she refuses to allow me to do it.

...

THE COURT:

So you are willing to pay it?

THE DEFENDANT:

Yes. I was willing to pay that.

Appellant was ordered on March 2, 2017, to pay child support in the amount of \$825 per month, retroactive to August 10, 2015, as well as an additional \$75 per month toward arrearages.³ Appellant did not seek review of the trial court's ruling at that time.

On February 15, 2018, appellant filed a rule to modify child support. On April 5, 2018, appellant filed a motion to annul the judgment of February 16, 2017.⁴ In his motion to annul, appellant asserted that a "Daycare Cost Letter" used to determine his child support obligation was fraudulently obtained, contained improper calculations, and should not have been introduced into evidence. The motion to annul was denied on April 19, 2018, and appellant withdrew his motion to modify child support on that same date.

On February 8, 2019, appellant filed a petition to annul the judgment of February 16, 2017. The petition asserted that the February 16, 2017 judgment of

she pays tuition of \$125 per week. If you have any questions, please feel free to call me between the hours of 6:30 am to 2:30 pm.

³ The Order explained that "the Court deviated from guidelines due to minor child living in household of Defendant."

⁴ In the memorandum in support of his motion, appellant claimed that February 16, 2017 judgment was obtained by fraud and ill practices. Specifically, appellant argued that evidence of child care costs introduced at the hearing was fraudulently obtained and not in the proper form. Appellant concluded that the fraudulent documentation led to an error in the child support calculation. Included as Exhibit "E" to his memorandum, appellant attached a document which purports to be a record of payments received by Angels Among Us Daycare for P.C. from October 15, 2015 through July 18, 2017. At the hearing on appellant's motion, the State objected to the introduction of the document on the basis that it had not been authenticated. The court took "judicial notice" of the document and noted the State's objection.

child support “was obtained by fraud or ill practice” and was based upon “fraudulently submitted” documentation and “gross miscalculations” by the Louisiana Department of Children and Family Services. Appellant alleged that “this wrongdoing” was discovered by him on February 8, 2018.

The State filed an exception to appellant’s motion to annul on the basis of *res judicata* on April 15, 2019. The trial court granted the State’s exception on April 18, 2019 and dismissed appellant’s motion to annul judgment.⁵ Relator sought a writ of review from this Court, which was granted for the limited purpose of ordering the trial court to consider appellant’s motion of intent to seek writs as a timely-filed motion for appeal. *State v. Johnson*, 19-276 (La. App. 5 Cir. 6/14/19) (unpublished writ). The instant appeal follows.

ASSIGNMENTS OF ERROR

On appeal, appellant raises a total of seven assignments of error. Generally, a court of appeal will not consider an issue which is raised for the first time on appeal. *Stewart v. Livingston Parish Sch. Bd.*, 07-1881 (La. App. 1 Cir. 5/2/08), 991 So.2d 469; Uniform Rules-Courts of Appeal, Rule 1-3.” *Gremillion v. Gremillion*, 10–05 (La. App. 3 Cir. 7/7/10), 43 So.3d 1063, 1068, *writ denied*, 10-2125 (La.12/10/10), 51 So.3d 726. Considering the failure of appellant to raise the following issues in the trial court to the extent that they are not addressed in the judgment, we do not consider these assignments of error:

3. The Hearing Officer erred in depriving Applicant, right to due process based upon the fact he was unrepresented by counsel during initial judgement.

4. The Hearing Officer erred in deviating from Child Support guidelines.

5. The Hearing Officer erred previous issuing [sic] warrant for defendant's arrest when court lacked personal jurisdiction and/or probable cause.

⁵ Evidence introduced as Exhibit State 1 at the April 19, 2018 hearing consisted of “Case log information” from December 6, 2016, which indicated that the daycare had been contacted by phone to verify the amount of P.C.’s tuition.

6. The State did not have a Right of Action to pursue a Child Support order against defendant.

7. Whether a contract is valid if a party has been coerced by a third party or his consent was not freely given.

The remaining assignments of error, which are properly before us on appeal are:

1. The Hearing Officer erred, as a matter of law, in granting Appellee, STATE OF LOUISIANA exception of Res Judicata.

2. The Hearing Officer erred in not recognizing Appellee, STATE OF LOUISIANA error as inexcusable.

LAW AND ANALYSIS

Louisiana Revised Statute 13:4231 defines the doctrine of *res judicata* as follows:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The party urging a peremptory exception of *res judicata* bears the burden of proving its essential elements by a preponderance of the evidence. *Rudolph v. D.R.D. Towing Co., LLC*, 10-629 (La. App. 5 Cir. 1/11/11), 59 So.3d 1274, 1277. In *Chevron U.S.A., Inc. v. State*, 07-2469 (La.9/8/08), 993 So.2d 187, 194, the Louisiana Supreme Court determined that five elements must be satisfied for a finding that a second action is precluded by *res judicata*: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of

action asserted in the second suit existed at the time of the final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.

Appellate courts review an exception of *res judicata* using the *de novo* standard of review. *Woodlands Dev. L.L.C. v. Regions Bank*, 16-324 (La. App. 5 Cir. 12/21/16), 209 So.3d 335, 340; *Reed v. Cowboy's W. Store & Trailer Sales, Inc.*, 16-462 (La. App. 3 Cir. 3/1/17), 214 So.3d 987, 997, *writ denied*, 17-0559 (La. 5/19/17), 219 So.3d 1108. The doctrine of *res judicata* is *stricti juris*, and any doubt concerning application of the principle of *res judicata* must be resolved against its application. *Bourgeois v. A.P. Green Indus.*, 09-753 (La. App. 5 Cir. 3/23/10), 39 So.3d 654, 657.

In the instant matter, appellant's April 5, 2017 motion to annul alleged, in summary, that the calculation of child support was incorrect because evidence pertaining to child care costs for P.C. was fraudulently obtained and maliciously used by the State. The hearing transcript of April 19, 2018 shows that the trial court limited the issue to "whether or not the judgment rendered on March -- in March of 2017 was procured by fraud or ill practice, not whether it was accurate based upon the information provided that day." The court acknowledged that the daycare had given two sets of numbers regarding P.C.'s tuition. However, appellant did not produce a witness from the daycare to explain the discrepancy. In denying the motion to annul, the trial court concluded:

THE COURT:

. . .

So I have -- basically, the Court is presented evidence from the same source providing two different numbers. The State had no role in crafting this letter from the same individual. So to represent that the State engaged in any fraud or ill practice to this Court is grossly

misstated. The information that was provided and not objected to was in good faith.

Appellant's second motion to annul the judgment of February 16, 2017, was filed on February 8, 2019. In his petition to annul, appellant asserted that the judgment rendered on February 16, 2017, was obtained by fraud or ill practice, having been procured by incorrect information supplied by P.C.'s mother and used by the State to grossly miscalculate his child support obligation.

At the hearing of April 18, 2019, the State argued that La. R.S. 13:4231(3) applied to the facts to preclude re-urging his motion to annul. Appellant argued that he was not in the same capacity, as he had filed the new motion as an "executor" of the Dexter Johnson estate. In finding this argument to be without merit, the trial court stated:

THE COURT:

. . .

Before the Court is an exception of *res judicata* to the petition filed by Mr. Johnson to annul the judgment rendered by this Court on February 16, 2017.

This Court previously adjudicated a motion to annul judgment, which the Court accepted as a petition given Mr. Johnson's *pro se* status, to annul the same judgment for the same reasons. Mr. Johnson is representing to the Court he is appearing and prosecuting the instant petition in a different capacity. Not individually, but as the executor of his estate.

The Court fails to -- the Court does not agree with the bifurcation of the individual, the natural person, from the executor of his estate when there's a living person. He is manager and conservator of his own estate and was at the time he prosecuted his motion in 2018. There is not a different capacity that's acknowledged. Therefore, the Court is granting the exception of *res judicata*, dismissing the petition to annul judgment with prejudice.

In applying the *Chevron U.S.A.* factors to the instant case, we find that the trial court's denial of appellant's first motion to annul on April 19, 2018, was a valid and final judgment that appellant did not timely seek to have reviewed. A comparison of the first and second motions to annul demonstrate that appellant was

seeking identical relief: to vacate the child support order on the alleged basis that the State had acted fraudulently or in bad faith. Further, in both actions to annul, appellant alleged the identical act of fraud: that the State intentionally used a falsified document from P.C.'s daycare to calculate the total amount of child support owed.

Appellant filed the second motion to annul as the executor of his own estate⁶ and, on this basis, he argued that any judgment rendered would not be between the same two parties cast in the first judgment. As correctly observed by the trial court, however, such a proposition is neither permissible nor supported by law.

Accordingly, based upon our *de novo* review of the record, we find no error in the trial court's ruling that granted the State's exception of *res judicata*.⁷

DECREE

For the foregoing reasons, the judgment of the trial court is affirmed.

AFFIRMED

⁶ La. C.C. art. 872 states:

The estate of a **deceased** means the property, rights, and obligations that a person leaves **after his death**, whether the property exceeds the charges or the charges exceed the property, or whether he has only left charges without any property. The estate includes not only the rights and obligations of the deceased as they exist at the time of death, but all that has accrued thereto since death, and the new charges to which it becomes subject. [Emphasis added.]

⁷ In so ruling, we clarify for appellant, who is representing himself in proper person, that while he may not raise the issue of alleged fraud by the State in future proceedings, he is not precluded from seeking modification of support as provided for by LSA-C.C. art. 239.

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF JUDGMENT AND CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN DELIVERED
IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 2-16.4 AND 2-16.5** THIS DAY
JANUARY 29, 2020 TO THE TRIAL JUDGE, CLERK OF COURT, COUNSEL OF RECORD AND ALL PARTIES
NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

19-CA-422

E-NOTIFIED

29TH JUDICIAL DISTRICT COURT (CLERK)
HONORABLE TIMOTHY S. MARCEL (DISTRICT JUDGE)
LOUIS G. AUTHEMENT (APPELLEE)

MAILED

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