

**IN THE APPELLATE COURT FOR THE
STOCKBRIDGE-MUNSEE TRIBAL COURT**

Lynne Miller,

Case No. AP-2011-02

Plaintiff-Appellant,

Trial Court Case No. 2011-CV-02

v.

Judge Robert Miller Jr.

Defendant-Appellee.

OPINION AND ORDER

INTRODUCTION

This is an appeal of a decision issued by Substitute Judge Wesley Martin who on May 31, 2011, dismissed the complaint of the Appellant wherein she alleged that Judge Robert Miller violated her civil rights by unreasonably and arbitrarily changing the terms of her September, 2000 final divorce.

BACKGROUND

This is the second appeal filed by Lynne Miller concerning Judge Robert Miller's handling of her divorce case. On or about November 9, 2010, she sought an injunction against Judge Miller claiming that Judge Miller was showing bias in favor of the respondent in the divorce action and was violating her civil rights by denying her due process of the law under the Indian Civil Rights Act (ICRA). She was seeking to prevent Judge Miller from presiding over future hearings concerning her case.

On January 12, 2011, the trial court, Judge Coury presiding, dismissed her complaint on the basis of judicial immunity and further found that her civil rights were not violated. Ms. Miller appealed this judgment on January 18, 2011 and on May 13, 2011 the Appellate Court affirmed that decision on both issues. On March 25, 2011, and prior to the decision being rendered in the first appeal, Ms. Miller filed another action which again alleges a violation of her civil rights. Judge Martin summarily dismissed this case stating that the plaintiff has not satisfactorily

demonstrated a truly distinct cause of action for which relief can be granted. The trial court held that the present action presents nothing new when measured against her previous action seeking an injunction.

STANDARD OF REVIEW

Because the trial court did not hear testimony, we review the trial court's order of dismissal as we would a decision granting a motion for summary judgment. Under summary judgment rules, a party is entitled to summary judgment if there are no genuine issues of material fact and that party is entitled to summary judgment as a matter of law. In reviewing the grant or denial of a summary judgment, we apply the same methodology as the trial court, and our review is *de novo*.

ANALYSIS

Judge Martin dismissed the underlying case stating that "the chief problem with the plaintiff's present cause of action is that her civil claims present nothing new when measured against her previous action for an injunction. 'It is as if the plaintiff lifted the relative parts of her injunction petition and merely changed the caption and headings, having first received an adverse decision on her prior petition from a judge within the same court system. These tactics do not suffice to give the plaintiff a truly new cause of action.'" P.3, Trial Court Decision.

In effect, Judge Martin dismissed the action finding that the issues presented for his review, were previously litigated in a prior action. This action by the court falls under the doctrine of claim preclusion, previously called *res judicata*, whereby a final judgment is conclusive in all subsequent actions between the same parties as to all matters which were litigated or which might have been litigated in the former proceedings. The purpose of this doctrine is to prevent repetitive litigation. To this end, the doctrine of claim preclusion seeks "to promote judicial economy and to conserve the resources the parties would expend in repeated and needless litigation of issues that were, or might have been resolved in a single prior action." *Mrozek v. Intra Fin. Corp.*, 281 Wis. 2d 448 (2005).

The elements of claim preclusion are: (1) an identity between the parties in the prior and present suits; (2) an identity between the causes of action in the two suits; and (3) a final judgment on the merits in a court of competent jurisdiction. *Wickenhouser v. Lehtinen*, 2007 WI 82, 302 Wis. 2d 41.

Although Judge Martin did not specifically identify the legal theory under which he dismissed this case, we believe the procedural posture and the stated rationale of the Order were sufficient to apprise this Court of the substance of the decision. Accordingly, we conclude that the question of claims preclusion was placed before this court with sufficient clarity.

In order to prevail under the doctrine of claim preclusion, all three elements of the doctrine must be satisfied. It is obvious that the first element is satisfied as Lynne Miller filed suit against

Judge Robert Miller Jr. in both lower court actions and in her first appeal. Secondly, the causes of action, though phrased in terms of an injunction in the first matter and a civil rights claim in the second matter, both sought the same relief, the removal of Judge Miller from hearing her divorce action. Thus the second element of claims preclusion is satisfied. Thirdly, the courts that heard these matters are courts of competent jurisdiction as recognized by both the Federal and State governments and duly empowered by the Stockbridge-Munsee Tribe to hear matters of this type. Thus the third element of the doctrine is satisfied.

This appeal is the fourth attempt by the Appellant to litigate the same issues that were addressed in Judge Coury's court. Thus, we find that Judge Martin was justified in dismissing the case summarily as this is repetitive litigation of the same issues, involving the same parties, and of which were decided by courts of competent jurisdiction. Based on the above, we **affirm** the decision of the trial court.

Our analysis of this case does not end here. Upon review of the entire history of the case, we find that there were procedural mistakes made that were not addressed in the prior actions. While it is entirely proper for a judge to continue hearing post-judgment matters in a divorce action, it is not proper for a judge, on his or her own initiative, to re-open a case and deal with the substantive issues of the case. This can only be done upon proper motion filed by one of the original parties to the action. A judge can re-open a case upon his own initiative to correct ministerial mistakes, but that power ends there and to do otherwise is an abuse of discretion.

The mistakes made in this case, although an abuse of discretion, do not reach to the level of a violation of Ms. Miller's civil rights and we so rule.

Based on the circumstances of this case and in the best interest of the justice, we take the extraordinary action of highly recommending that Judge Miller recuse himself from hearing any matters involving this case. By our recommendation, we do not find nor imply that there is any evidence of bias or prejudice. We firmly believe that this matter must be put to rest and our decision is meant to achieve that end.

So ordered this 2nd day of November, 2011.

By the court:





Leland Ninham, Pro tem



Ernest St. Germaine, Pro tem



Robert Kitten, Pro tem



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