

CASE FILE

SUPPLEMENT TO MIGRA v. WARREN CITY SCHOOL DISTRICT

NO. 82-738

Definition of Cause of Action for Res Judicata Purposes
under Federal Law

The definition of "cause of action" for res judicata purposes under federal law is not completely clear. In its most recent pronouncement on the subject, this Court stated:

"Definitions of what constitutes the 'same cause of action' have not remained static over time." Nevada v. United States, No. 81-2245, 51 U.S.L.W. 4974, 4979 (June 24, 1983). The Court cited the difference between the definition adopted in the Restatement (First) of Judgments and that used in the Restatement (Second) of Judgments as support for this statement. However, in Nevada, the Court found it "unnecessary ... to parse any minute differences which these differing tests might produce." Id. at 4980. Thus, this Court has not expressly adopted any of the three basic positions noted by the Ohio S. Ct. in its decisions.

The Courts of Appeals which have addressed the subject have not been in complete agreement, reflecting the notion that "[t]here is no one test for deciding whether the substances of two actions are the same for the purposes of res judicata."

Stevenson v. International Paper Co., 516 F.2d 103, 109 (CA5 1975). However, most appear to adopt a reading of the term which is broad enough to preclude Migra from relitigating the present claim had she brought the first action in federal court. For example, the CA5 in a recent en banc opinion expressly adopted the Second Restatement's transactional definition. Nilsen v. City of Moss Point, 701 F.2d 556, 560 n.4 (1983) (en banc). Under that definition, "the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." Restatement (Second) of Judgments, §24 (1982). Thus, in Nilsen, plaintiff's §1983 action was barred by res judicata when her prior Title VII action arising out of the same transaction was dismissed on the merits.

Similarly, the CA2 in Expert Electric, Inc. v. Levine, 554 F.2d 1227 (CA2 1977), adopted a definition of cause of action which is related to the factual background of the action. After noting the different ways in which the term cause of action had been defined by both state and federal courts, the CA2 stated: "The crucial element underlying all of these standards is the factual predicate of the several claims asserted. For it is the facts surrounding the transaction or occurrence which operate to constitute the cause of action, not the legal theory upon which the litigant relies." Expert Electric is not directly on point because the court in that case gave preclusive effect to a prior state court action. Nevertheless, the case is relevant because

the court did not purport to apply §1738, which would require an inquiry into state law.

The CA8 has adopted a definition of res judicata which, while possibly not as broad as the transactional definition utilized by the CA5 and CA2, appears to be broader than the primary right-primary duty theory which petr claims the Ohio courts have adopted. In Hanson v. Hunt Oil Co., 505 F.2d 1237 (CA8 1974), the CA8 held that plaintiff was precluded by principles of res judicata from bringing an action alleging that defendant destroyed, and otherwise failed to monitor properly, oil wells in which plaintiff had a working interest. Plaintiff, in an earlier federal court proceeding, had sought to reform the letter agreement under which the parties were operating. In the earlier decision, the court had not only refused to reform the agreement, it approved an accounting covering the period in question, specifically finding that the defendant had complied with the provisions of the agreement and acted in accordance with the intentions of the party.

The CA8 noted that the prior action had brought into question not only the interpretation of the letter agreement, but defendant's operation in the field under that contract. Thus, even though plaintiff couched his present action in terms of negligence, willful destruction, and failure to monitor actual production, these were all matters which could have been raised in the prior proceeding. The CA8 stated that it was applying a "broad" definition of cause of action, i.e., "whether the wrong for which redress is sought is the same in both actions,"

CASE FILES:

distinguishing this from the more narrow "same right is infringed by the same wrong" test utilized by other courts. Id. at 1240. The court justified its use of the broader test by quoting Professor Moore:

Courts and the public have an interest, in addition, to that of litigants, in a sound application of res judicata to the end that there be stability in a final judgment rendered on the merits and that repetitive litigation be avoided. In the main, a broad and practical concept of "cause of action" will best promote that interest, at least whenever the forum, such as the federal, has a procedure which enables a claimant to put forward all grounds, and a defendant all defenses, whether these grounds or defenses be legal and/or equitable and whether they be consistent or inconsistent.

Id. (quoting 1B J. Moore, Moore's Federal Practice ¶ 0.410[1] (2d ed. 1965)). Thus, the CA8 acknowledged and followed the trend toward the broad and practical concept of res judicata, the trend noted in the most recent version of the Restatement.

The CA6 has adopted still a different definition, noting that "[t]o constitute a bar, there must be an identity of the causes of action - that is, an identity of the facts creating the right of action and of the evidence necessary to sustain each action." Westwood Chemical Co., Inc. v. Kulick, 656 F.2d 1224, 1227 (CA6 1981). In Westwood, the CA6 held that the plaintiff was precluded from attempting to enforce a subpoena duces tecum against officials of Dart Industries because a federal court in California had already determined that plaintiff could not enforce a similar discovery request against other Dart officials. The California court refused to enforce the request because plaintiff had released Dart from any discovery obligations under

CASE FILES

OPINIONS

an agreement between the two companies. Since the same agreement governed the present litigation, the CA6 held that there was no need to relitigate the issue. Thus, the result in Westwood could be sustained under almost any definition of cause of action (since both actions required an interpretation of the same clause of the agreement), but the definition of cause of action used by the court, like that used by the courts in the opinions discussed above, focused on the facts or transaction which gave rise to the litigation.

In sum, while there do exist a few older decisions in which a CA has applied res judicata principles in such a manner that Migra would prevail under federal law, see, e.g., Dagley v. Armstrong Rubber Co., 344 F.2d 245 (CA7 1965) (judgment in action for negligent manufacture of tire does not bar subsequent suit for breach of warranty), the clear trend is toward adopting the broader definition advocated by Warren City in this case. Thus, the Court would be perfectly justified in ruling that even if §1738 did not require the application of res judicata principles in this case (because state law would not require that the present suit be precluded by principles of res judicata), federal principles of res judicata preclude the present litigation.

Kevin