

ENTRY ORDER

AUG 6 2009

SUPREME COURT DOCKET NO. 2009-127

AUGUST TERM, 2009

Leesa L. Callahan	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
	}	
James P. Callahan	}	DOCKET NO. 233-6-99 Wrdm

In the above-entitled cause, the Clerk will enter:

Appellee Leesa L. Callahan (wife) has filed a motion to dismiss this appeal on the grounds that it is barred by the doctrines of res judicata, or alternatively, the law-of-the-case. We hereby grant wife's motion on law-of-the-case grounds.


The underlying facts of this case were recounted at length in Callahan v. Callahan, No. 2007-267, slip op. (Vt. March 14, 2008) (unreported mem.). In short, appellant James P. Callahan (husband) seeks relief from a provision in the parties' final divorce order requiring him to pay 25% of his retirement pay to wife. Husband failed to appeal the divorce order, which was issued in 1999, but filed a motion for relief from the judgment under Vermont Rule of Civil Procedure 60(b) in 2007. The family court denied husband's motion, and ordered him to pay wife 25% of his gross retirement pay. We affirmed that denial in Callahan, No. 2007-271, slip op. at *1. In so doing, we rejected husband's argument that he should pay 25% of his retirement pay after certain deductions, concluding, instead, that "it was reasonable for the [trial] court to determine that wife is entitled to receive 25% of husband's gross retirement pay." Id. * 4-5 (emphasis added).

Subsequent to our decision in Callahan, husband filed a motion with the family court to "clarify" that wife was entitled to only 25% of his retirement pay after deductions, rather than 25% of his gross retirement pay. Citing our decision in Callahan as having resolved the issue sought to be "clarified," the family court denied husband's motion. Husband appealed to this Court. After husband filed his brief and printed case, wife filed this motion to dismiss.

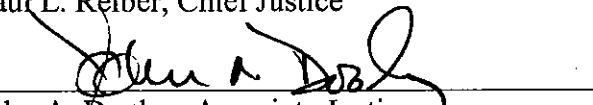
As the family court ruled, we resolved the issue raised by husband in his motion to "clarify," and subsequent appeal to this Court in our previous opinion, and our resolution of the issues establishes the "law of the case." The issue that husband raises in this appeal falls squarely within the scope of this rule of practice precluding courts from reexamining issues previously decided in the same case by the same court or a higher appellate court. See Coty v. Ramsey Assocs., Inc., 154 Vt. 168, 171 (1990) (defining doctrine). If, in the instant context, we

were to regard these questions “as still open for discussion and revision in the same cause, there would be no end to the litigation until the ability of the parties or the ingenuity of their counsel were exhausted.” Id. (quotations omitted). We therefore dismiss husband’s appeal.

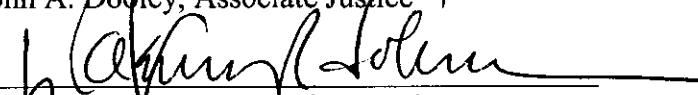
BY THE COURT:



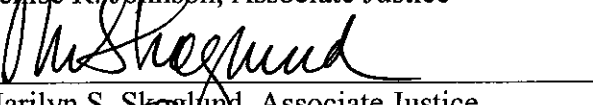
Paul L. Reiber, Chief Justice



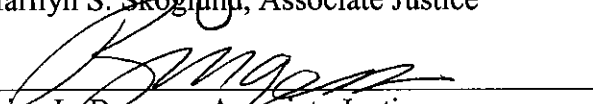
John A. Dooley, Associate Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice