

STATE OF VERMONT

SUPERIOR COURT
Washington Unit

2019 MAR 19 P 4:11

CIVIL DIVISION
Docket No. 317-5-18 Wncv

SUSAN T. HOYT
Plaintiff

v.

BERNARD VON TRAPP
Defendant

DECISION

Ms. Hoyt's Motion for Summary Judgment

The court understands the underlying legal controversy in this case to be whether Defendant Bernard Von Trapp has the right to access his land via a discontinued portion of "Long Road" that exists on the property of his neighbor and ex-wife Plaintiff Susan Hoyt. In earlier proceedings, the court denied Ms. Hoyt's summary judgment motion, by which she sought a declaration that the Long Road issue had been resolved in her favor in prior litigation, and the court granted Mr. Von Trapp's motion for a more definite statement because the nature of the disputed property rights was wholly unclear, at least to the court. Ms. Hoyt then filed an amended complaint, asserting detailed allegations related to the prior litigation but not specifying with any clarity the property rights disputed in this case, and then filed a second motion for summary judgment asserting that the prior litigation is *res judicata* as to this case.¹ In short, she again argues that the dispute between the parties already was decided in her favor.

The court declines to attempt to untangle any remaining confusion over what happened in the prior case. That case appears to have included (1) a controversy between Mr. Von Trapp and others and (2) a controversy between Mr. Von Trapp and Ms. Hoyt, the same controversy presented in this case. The former controversy was resolved in the prior case. The latter controversy was not. The court came to believe that this latter controversy, never resolved by the court, stopped being a controversy between Ms. Hoyt and Mr. Von Trapp. That belief clearly was wrong but led to dismissal regardless. "Vermont courts are vested with subject matter jurisdiction only over actual cases or controversies involving litigants with adverse interests." *Brod v. Agency of Nat. Res.*, 2007 VT 87, ¶ 8, 182 Vt. 234.

Res judicata will bar "the litigation of a claim or defense if there exists a final judgment in former litigation in which the 'parties, subject matter and causes of action are identical or substantially identical.'" *Berlin Convalescent Ctr. v. Stoneman*, 159 Vt. 53, 56 (1992) (quoting *Berisha v. Hardy*, 144 Vt. 136, 138 (1984)). *Res judicata* does not apply in the circumstances

¹ Mr. Von Trapp succinctly describes the controversy between the parties in his counterclaim in this case. In subsequent briefing, Ms. Hoyt takes issue with his use of terminology—what ROW 1 and ROW 2 may refer to—but appears to agree, at least generally, that the controversy is whether Mr. Von Trapp has any legal right to access his property by the discontinued portion of Long Road that crosses Ms. Hoyt's property.

presented because there is no apparent final judgment in the prior case addressing the controversy between the parties in this case, and it would not be fair to interpret the prior litigation otherwise. In relation to the other parties in the prior litigation, Mr. Von Trapp's and Ms. Hoyt's interests were aligned rather than adverse. When *that* matter was resolved, the case turned to the *different* dispute between Mr. Von Trapp and Ms. Hoyt. Their dispute unfortunately never progressed to a final judgment because the court dismissed the case before it could be finally settled or litigated to judgment.

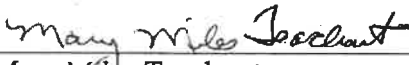
There is no reasonable way to enforce the judgment of the prior case against either party in this case in relation to the dispute they present now regardless whether they intended to resolve it in the prior case. At the end of the day, neither had a full and fair opportunity to litigate the current controversy in the prior case. See *Kremer v. Chem. Const. Corp.*, 456 U.S. 461, 481 n.22 (1982) ("While our previous expressions of the requirement of a full and fair opportunity to litigate have been in the context of collateral estoppel or issue preclusion, it is clear . . . that invocation of res judicata or claim preclusion is subject to the same limitation."). There is no applicable res judicata bar to this litigation.

ORDER

For the foregoing reasons, Ms. Hoyt's motion for summary judgment is *denied*.

The prior stipulation for a proposed pretrial scheduling order now appears to be out of date. The attorneys are requested to submit a new one by March 29, 2019.

Dated at Montpelier, Vermont this 18th day of March 2019.



Mary Miles Teachout
Superior Judge