

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-004

MAY TERM, 2007

Patricia Thibodeau	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Family Court
	}	
Timothy Thibodeau	}	
	}	DOCKET NOS. 341-10-95 Wrfa
	}	501-11-95 Wrdm

Trial Judge: Harold E. Eaton, Jr.

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

Father appeals the family court's December 15, 2006 order dismissing for lack of jurisdiction his motion to dismiss a relief-from-abuse order. We affirm.

Following a contested hearing, the family court issued a final divorce order and a final relief-from-abuse order in June 1997. The relief-from-abuse order found that father had physically abused mother and the parties' two children. Litigation continued between the parties, and in February 2005, this Court affirmed the family court's denial of father's motion to terminate the relief-from-abuse order, but amended the order to terminate on October 26, 2009, when the youngest child reached eighteen years of age. Thibodeau v. Thibodeau, 2005 VT 14, 178 Vt. 457 (mem.).

In July 2006, father filed a motion asking the family court to dismiss the modified relief-from-abuse order. In a September 13, 2006 order following a hearing, the court concluded that it no longer had jurisdiction to modify the existing relief-from-abuse order or to consider father's motion to dismiss the order. In so ruling, the court relied upon an April 18, 2006 order declining jurisdiction in favor of New York, where the mother and children had lived for years. Father did not appeal this order, but on December 14, 2006 renewed his motion to dismiss the relief-from-abuse order. Citing its September 13, 2006 order, the family court dismissed the motion for lack of jurisdiction.

On appeal, father argues that the family court's April 18, 2006 order declined jurisdiction over proceedings concerning parental rights and responsibilities, but that jurisdiction over the relief-from-abuse proceeding remained in Vermont. We find no merit to this argument. In its April 18, 2006 order, the family court declined to exercise jurisdiction over parent-child issues. Both the divorce and relief-from-abuse proceedings concerned the parties' children and had been consolidated since the mid-nineties. See V.R.F.P. 4(n)(1) (if a party to an abuse-prevention action later files a

complaint for divorce, the court where the latter complaint was filed shall immediately consolidate the two actions). In any event, father failed to file a timely appeal of the family court's September 13, 2006 order dismissing for lack of jurisdiction his previous motion to dismiss the relief-from-abuse order. Therefore, the doctrine of res judicata precluded father from presenting the claim anew in his December 2006 motion. See Kellner v. Kellner, 2004 VT 1, ¶ 8, 176 Vt. 571 (mem.) (res judicata bars claims finally resolved in previous litigation in which the parties, subject matter, and causes of action were identical or substantially identical).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice