KeyCite Yellow Flag - Negative Treatment
Declined to Follow by Richardson v. Richardson, S.D., December 27, 2017

6 N.Y.3d 94
Court of Appeals of New York.

XIAO YANG CHEN, Appellant,
v.
Ian Ira FISCHER, Respondent.

Dec. 15, 2005.

Synopsis

Background: Prior to their final judgment of divorce, wife brought personal injury action against husband to recover damages for physical and emotional abuse she allegedly sustained during their marriage. The Supreme Court, Westchester County, Aldo A. Nastasi, J., dismissed action. Wife appealed. The Supreme Court, Appellate Division, 12 A.D.3d 43, 783 N.Y.S.2d 394, affirmed. Wife was granted leave to appeal.

[Holding:] The Court of Appeals, Ciparick, J., held that wife's personal injury suit was not barred by res judicata.

Reversed and remitted.

West Headnotes (5)

[1] **Damages** Intentional or Reckless Infliction of Emotional Distress; Outrage

New York does not recognize a cause of action to recover damages for intentional infliction of emotional distress between spouses.

4 Cases that cite this headnote

[2] **Judgment** Theory of Action or Recovery
Judgment Nature and Form of Remedy

Typically, principles of res judicata require that once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy.

28 Cases that cite this headnote

[3] **Judgment** Nature and Requisites of Former Recovery as Bar in General

The primary purposes of res judicata are grounded in public policy concerns and are intended to ensure finality, prevent vexatious litigation, and promote judicial economy.

15 Cases that cite this headnote

[4] **Judgment** What Constitutes Identical Causes

In determining whether particular claims are part of the "same transaction" for res judicata purposes, a pragmatic test is applied, analyzing whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

39 Cases that cite this headnote

[5] **Divorce** Merger and Bar of Causes of Action and Defenses

Judgment in divorce action, in which wife counterclaimed for divorce based on cruel and inhuman treatment, was not res judicata so as to bar wife's personal injury suit, which she commenced against husband after divorce action, even though the facts arose from the same transaction or series of events and the personal injury claim could have been litigated with the matrimonial action, where all of wife's fault allegations, save one, were withdrawn by stipulation for purpose of expediting matrimonial action. McKinney's CPLR 601(a).

14 Cases that cite this headnote

Attorneys and Law Firms

*****96** Law Office of Paul Grobman, New York City (Paul Grobman of counsel), for appellant.

Bleakley Platt & Schmidt, LLP, White Plains (Robert D. Meade of counsel), for respondent.

Law Offices of Annette G. Hasapidis, South Salem (Annette G. Hasapidis, Alayne Katz and Andrea Phoenix of counsel), for Women's Bar Association of the State of New York, amicus curiae.

Amanda B. Norejko, New York City, and Laura A. Russell for Sanctuary for *****97** Families' Center for Battered Women's Legal Services, amicus curiae.

Cynthia B. Rubin, New York City, Sheila A. Agnew and Jennifer A. Covell for Association of the Bar of the City of New York, amicus curiae.

Elliot Scheinberg, New York City, for American Academy of Matrimonial Lawyers, New York Chapter, amicus curiae.

***98 **724 OPINION OF THE COURT**

CIPARICK, J.

Plaintiff Xiao Yang Chen and defendant Ian Ira Fischer were married on March 11, 2001. Shortly thereafter, Fischer commenced an action for divorce on the ground of cruel and inhuman treatment. Chen counterclaimed for divorce —also alleging cruel and inhuman treatment—and asserted an additional cause of action for fraudulent inducement. Specifically, as grounds for divorce, Chen alleged that on May 6, 2001, Fischer "grabbed [her] and violently slapped her across the face and ear causing ***99** [her] to suffer bruising, pain and swelling" and that he threw her on the ground and attempted to suffocate her. As a result of that incident, each party filed a family offense petition against the other in Family Court and received a temporary order of protection. The parties agreed to consolidate these petitions with the matrimonial action. At the conclusion of the matrimonial trial, they further agreed to withdraw the petitions without prejudice on the record in open court.

On October 15, 2001, prior to trial of the matrimonial action, the parties entered into a stipulation on the issue of fault. "[I]n satisfaction of the stipulation," the parties agreed to withdraw all their fault allegations—including those related to the May 6 incident—save one. After trial on the remaining issues—including equitable distribution and a fraudulent inducement cause of action—on May 8, 2002 a dual judgment of divorce was granted on the ground of cruel and inhuman treatment based on each party's sole remaining fault allegation.

Chen allegedly commenced the instant personal injury action on January 18, 2002, while the matrimonial action was pending. [1] The complaint asserted two causes of action—one for intentional infliction of emotional distress and a second for assault and battery. As to the second cause of action, the complaint alleged that on May 6, 2001, Fischer slapped her in the face and ear, causing permanent injury, necessitating continuing medical treatment and rendering her unable to perform her usual and customary activities. Fischer answered, raising several affirmative defenses, including res judicata and various theories of estoppel.

Fischer moved to dismiss the complaint pursuant to CPLR 3211(a)(5) and Chen cross-moved to dismiss several of Fischer's affirmative defenses. Supreme Court granted Fischer's motion and denied Chen's cross motion. The court found that the allegations in Chen's personal injury action were "virtually identical" to those in her counterclaim for divorce and arose out of the same transaction or series of transactions. Thus, the court determined that the tort action was barred by res judicata.

[1] The Appellate Division affirmed, agreeing that the action was barred because the tort claim could have been litigated with the divorce action and Chen did not expressly reserve the right to ***100** bring that claim when she withdrew her fault ****725 ***98** allegations for purposes of the stipulation. The Court extended the rule we set forth in *Boronow v. Boronow,* 71 N.Y.2d 284, 290, 525 N.Y.S.2d 179, 519 N.E.2d 1375 [1988]—that issues relating to marital property be decided with the matrimonial action—to interspousal tort actions. Specifically, the Court found that "[s]ocietal needs, logic, and the desirability of bringing spousal litigation to finality now compel us to ... hold that an interspousal tort action seeking to recover damages for personal injuries commenced subsequent to, and separate from, an action for divorce is ... barred by claim preclusion" (12 A.D.3d 43, 47, 783 N.Y.S.2d 394 [2004]). [2] We granted Chen leave to appeal and now reverse.

[2] **[3]** Typically, principles of res judicata require that "once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions

are barred, even if based upon different theories or if seeking a different remedy" (*O'Brien v. City of Syracuse,* 54 N.Y.2d 353, 357, 445 N.Y.S.2d 687, 429 N.E.2d 1158 [1981]). In the context of a matrimonial action, this Court has recognized that a final judgment of divorce settles the parties' rights pertaining not only to those issues that were actually litigated, but also to those that could have been litigated (*Rainbow v. Swisher,* 72 N.Y.2d 106, 110, 531 N.Y.S.2d 775, 527 N.E.2d 258 [1988]; *see also O'Connell v. Corcoran,* 1 N.Y.3d 179, 184–185, 770 N.Y.S.2d 673, 802 N.E.2d 1071 [2003]). The primary purposes of res judicata are grounded in public policy concerns and are intended to ensure finality, prevent vexatious litigation and promote judicial economy (*see Matter of Hodes v. Axelrod,* 70 N.Y.2d 364, 372, 520 N.Y.S.2d 933, 515 N.E.2d 612 [1987]; *Matter of Reilly v. Reid,* 45 N.Y.2d 24, 28, 407 N.Y.S.2d 645, 379 N.E.2d 172 [1978]). However, unfairness may result if the doctrine is applied too harshly; thus "[i]n properly seeking to deny a litigant two 'days in court', courts must be careful not to deprive [the litigant] of one" (*Reilly,* 45 N.Y.2d at 28, 407 N.Y.S.2d 645, 379 N.E.2d 172).

[4] It is not always clear whether particular claims are part of the same transaction for res judicata purposes. A "pragmatic" test has been applied to make this determination —analyzing "whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations ***101** or business understanding or usage" (Restatement [Second] of Judgments § 24[2]; *see Smith v. Russell Sage Coll.,* 54 N.Y.2d 185, 192–193, 445 N.Y.S.2d 68, 429 N.E.2d 746 [1981]; *Reilly,* 45 N.Y.2d at 29, 407 N.Y.S.2d 645, 379 N.E.2d 172). [3]

[5] Applying these principles, it is apparent that personal injury tort actions and divorce actions do not constitute a convenient trial unit. The purposes behind the two are quite different. They seek different types of relief and require different types of proof. Moreover, a personal injury action is usually tried by a ****726** *****99** jury, in contrast to a matrimonial action, which is typically decided by a judge when the issue of fault is not contested. Further, personal injury attorneys are compensated by contingency fee, whereas matrimonial attorneys are prohibited from entering into fee arrangements that are contingent upon the granting of a divorce or a particular property settlement or distributive award (*see* Code of Professional Responsibility DR 2–106[c][2][i] [22 NYCRR 1200.11(c)(2)(i)]).

This case is distinguishable from the situation presented by *Boronow.* There, we noted that title issues are "intertwined" with the dissolution of the marriage relationship and could usually "be fairly and efficiently resolved" along with the matrimonial action (*see Boronow,* 71 N.Y.2d at 290, 525 N.Y.S.2d 179, 519 N.E.2d 1375). Typically, however, a personal injury action is not sufficiently intertwined with the dissolution of the marriage relationship as to allow for its efficient resolution. Thus, the interspousal tort action does not form a convenient trial unit with the divorce proceeding, and it would not be within the parties' reasonable expectations that the two would be tried together.

Significant policy considerations also support this conclusion. To require joinder of interspousal personal injury claims with the matrimonial action would complicate and prolong the divorce proceeding. This would be contrary to the goal of expediting these proceedings and minimizing the emotional damage to the parties and their families. Delaying resolution of vital matters such as child support and custody or the distribution of assets to await the outcome of a personal injury action could result in extreme hardship and injustice to the families involved, especially for victims of domestic violence. In addition, parties should be encouraged to stipulate to, rather than litigate, the issue of fault (*see* ***102** *Blickstein v. Blickstein,* 99 A.D.2d 287, 293–294, 472 N.Y.S.2d 110 [2d Dept.1984]; *see also O'Brien v. O'Brien,* 66 N.Y.2d 576, 589, 590, 498 N.Y.S.2d 743, 489 N.E.2d 712 [1985] [noting that fault should only be considered "in egregious cases" for purposes of equitable distribution, in part, "because fault will usually be difficult to assign and because introduction of the issue may involve the courts in time-consuming procedural maneuvers relating to collateral issues"]).

Unlike the Appellate Division, we decline to adopt the reasoning of the New Jersey Supreme Court in *Tevis v. Tevis*, 79 N.J. 422, 400 A.2d 1189 [1979]. In *Tevis,* the court held that under that State's "single controversy" rule, the interspousal personal injury claim should have been brought with the matrimonial action so that the issues between the parties could be decided in one proceeding in order to prevent protracted litigation (*see Tevis,* 79 N.J. at 434, 400 A.2d at 1196). However, that view is decidedly the minority view and the New Jersey Supreme Court has recently acknowledged the potential drawbacks to litigating an interspousal tort claim prior to the divorce proceeding—noting that it "may have a negative psychological impact on parties by prolonging the uncertainty of their marital status" (*Brennan v. Orban,* 145 N.J. 282, 303, 678 A.2d 667, 678 [1996]). Indeed, other states

to address the issue have reached the conclusion we reach today, emphasizing the fundamental differences between the two types of actions and noting the complications that could result from the rigid application of res judicata principles (*see Delahunty v. Massachusetts Mut. Life Ins. Co.,* 236 Conn. 582, 590–594, 674 A.2d 1290, 1295–1296 [1996]; *Henriksen v. Cameron,* 622 A.2d 1135, 1141–1142 [Me.1993]; *Heacock v. Heacock,* 402 Mass. 21, 23–24, 520 N.E.2d 151, 153 [1988]).

*****100 **727** Here, although the personal injury claim could have been litigated with the matrimonial action—as the facts arose from the same transaction or series of events—it was not, as all of Chen's fault allegations, save one, were withdrawn by stipulation for the salutary purpose of expediting the matrimonial action. She is therefore not precluded from litigating that claim in a separate action.

Parties are free, of course, to join their interspousal tort claims with the matrimonial action (*see* CPLR 601[a]) and the trial court retains discretion to sever the claims in the interest of convenience, if necessary (*see* CPLR 603). If a separate interspousal tort action is contemplated, however, or has been commenced, the better practice would be to include a reservation of rights in the judgment of divorce. Finally, if fault allegations are actually litigated in a matrimonial action, res judicata or some ***103** form of issue preclusion would bar a subsequent action in tort based on the same allegations.

Accordingly, the order of the Appellate Division should be reversed, with costs, and the case remitted to Supreme Court for further proceedings in accordance with this opinion.

Chief Judge KAYE and Judges G.B. SMITH, ROSENBLATT, GRAFFEO, READ and R.S. SMITH concur.
Order reversed, etc.

All Citations

6 N.Y.3d 94, 843 N.E.2d 723, 810 N.Y.S.2d 96, 2005 N.Y. Slip Op. 09572

Footnotes

1 The original complaint is not part of the record. The only version of the complaint in the record is an incomplete second amended complaint dated May 10, 2002—subsequent to the judgment of divorce.

2 The Appellate Division, citing *Weicker v. Weicker,* 22 N.Y.2d 8, 11, 290 N.Y.S.2d 732, 237 N.E.2d 876 [1968], held that "New York does not recognize a cause of action to recover damages for intentional infliction of emotional distress between spouses such as the one asserted by Chen in her first cause of action against Fischer" (12 A.D.3d 43, 45, 783 N.Y.S.2d 394 [2004]). We agree and limit our discussion to Chen's cause of action to recover damages for assault and battery.

3 *Smith* and *Reilly* cited section 61 from Tentative Draft No. 1 of the Restatement (Second) of Judgments, which has since been adopted at section 24 of the current Restatement.