UNITED STATES BANKRUPTCY COURT

EASTERN DISTRICT OF WASHINGTON

In re: DAVID WALLACE BAYS, Debtor.	Main Case No. 01-05127-JAR7
KELLY CASE, Plaintiff, vs. ANTHONY GRABICKI, SUCCESSOR BANKRUPTCY TRUSTEE FOR THE ESTATE OF DAVID BAYS Defendants.	Adversary No. A03-00237-JAR DECISION: DISSOLUTION DECREE NOT VOID

David Bays obtained his interest in the Kettle Falls property through the dissolution decree. The trustee's claim in the Kettle Falls property is dependent upon the award in the dissolution decree. Kelly Case argues that the dissolution decree is void because Judge Bastine, who heard the dissolution, had no jurisdiction to hear and decide the case. Linda Bays, David Bays' former spouse, had raised this issue in her appeal of the dissolution decree but lost in both the Court of Appeals and in her petition to the Washington Supreme Court. Kelly Case argues he is not bound by those decisions and moves for summary judgment that the decree is void.

I. ISSUE PRECLUSION/CLAIM PRECLUSION

This court discussed the application of the principles of issue preclusion/claim preclusion in its "Decision re: Slander of Title." [Doc. 515 p. 3-7]. That decision remains applicable to the facts of this case.

The Bays dissolution decree purports to void a number of transfers affecting Kelly Case's interest in the Kettle Falls property. It dealt with the marital status of David and Linda Bays and their respective interests in their separate and community assets. Kelly Case was not a party to that dissolution case and his interest in the Kettle Falls property was ancillary to the primary martial dispute. This is not an issue of claim preclusion (res judicata), but rather of issue preclusion (collateral estoppel).

Both preclusion doctrines require privity among the litigants. Kiecker v. Pacific Indem. Co., 5 Wash.App. 871, 877, 491 P.2d 244, 248-249 (Wash.App. 1971). If a party lacks privity with another litigant that party may seek to adjudicate the same claims and issues previously litigated by that litigant. *See Id* Litigants' interests in the same question or in proving the same facts do not create privity. Owens v. Kuro, 56 Wash.2d 564, 568, 354 P.2d 696, 699 (1960). Privity exists "in relation to the subject matter of the litigation," and the courts interpret the rule strictly "to mean parties claiming under the same title" and indicating a "mutual or successive relationship to the same right or property." *Id.* In regards to two parties in a successive relationship to the same property, "privity arises *only* if the adjudication of an owner's asserted rights in the property has already occurred when the owner transfers the property to a successor." Spahi v. Hughes-Northwest, Inc., 107 Wash.App. 763, 775-776, 27 P.3d 1233, 1239 (Wash.App. Div. 1, 2001). In other words, if the transfer of the property interest occurs prior to the owner's adjudication of the owner's interest in the property, the owner and successor are not in privity. Id.

Kelly Case is not in privity with Linda Bays with concern to their interests in the Kettle Falls property. Nor is Kelly Case in privity with Linda Bays' in regards to her efforts, following the dissolution, to challenge the jurisdiction of Judge Bastine and his legal determinations. Case acquired

his interest in the Kettle Falls property through a loan contract and quit claim deed executed in November 2000, which was before the Bays' dissolution was filed in 2001. The decree was entered in 2002. Kelly Case is not **precluded** from raising issues and claims concerning the Kettle Falls property which were adjudicated between Linda and David Bays in the dissolution. One of those issues raised in the dissolution in the dissolution was the challenge to Judge Bastine's jurisdiction to hear that case.

II. JUDGE BASTINE'S JURISDICTION

The court having determined Kelly Case is not precluded from challenging Judge Bastine's jurisdiction to adjudicate the Bays dissolution. The court now turns to the merits of that challenge.

The court must apply state law in determining this issue. The United States Supreme Court in the case of Erie R. Co. v. Tompkins, has ruled:

> Except in matters governed by the Federal Constitution or by acts of Congress, the law to be applied in any case is the law of the state. And whether the law of the state shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern.
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> ...
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> ...[T]he constitution of the United States, which recognizes and preserves the autonomy and independence of the states, -independence in their legislative and independence in their judicial departments. Supervision over either the legislative or the judicial action of the states is in no case permissible except as to matters by the constitution specifically authorized or delegated to the United States. Any interference with either, except as thus permitted, is an invasion of the authority of the state, and, to that extent, a denial of its independence.

304 U.S. 64, 78-9, 58 S.Ct. 817, 822-823 (1938). See also 28 U.S.C. § 1652. The jurisdiction of Judge Bastine in the Bays dissolution is strictly an issue of state law. It is not a matter in which federal interference is permitted.

Federal courts must apply the state substantive law, and federal procedural law. *Freund v Nycomend Amersham*, 347 F.3d 752, 761 (9th Cir. 2003). The federal court must give deference to state law when determining state issues. *See generally* *United Mine Workers v. Gibbs*, 383 U.S. 715

(1966); Butner v United States, 440 U.S. 48 (1979). When the state supreme court has determine a state issue, or when an appellate court has made a determination on which the state supreme court has not spoken and evidence does not suggest that the supreme court would disagree with the appellate court, the federal court should follow the decision of the appellate court. *Lawler v. Fireman's Fund Ins. Co.*, 322 F.3d 900, 903 (6th Cir. 2003). This is the case before this court in that the decision in In re Marriage of Bays, 131 Wash.App. 1032, 2006 WL 281143 (2006) is directly on point.

The Full Faith and Credit Clause of the United States Constitution Article IV Section 1 requires this result. 28 U.S.C. § 1738. Application of its policy promotes fair, consistent, and final legal determinations and an end to litigation. *See Van Dusen v. Barrack*, 376 U.S. 612, 638, 84 S.Ct. 805, 820 (1964); *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 288, 100 S.Ct. 2647, 2664 (U.S., 1980). By upholding the finality of state court judgments, the Full Faith and Credit Clause discourages endless legal battles where adversaries re-arm themselves in new forums to adjudicate matters already decided by competent state tribunals. *Thomas v. Washington Gas Light Co.*, 448 U.S. 261, 288, 100 S.Ct. 2647, 2664 (1980). The Full Faith and Credit doctrine upholds the validity and finality of state court determinations regarding state law issues. *See Van Dusen*, 376 U.S. at 638, 84 S.Ct. at 820. *Erie* prevents parties from forum shopping and achieving results in federal court which could not have been achieved in the court of a state where the action was filed. Federal jurisdiction should not enable parties to...achieve in federal court a result which could not have been achieved in court of the state where the action was filed. *Id.*

The Full Faith and Credit Clause compels this court to follow the Court of Appeals determination that Judge Bastine had the jurisdiction to adjudicate the Bays dissolution. It decided the jurisdiction matter, and the State Supreme Court refused to review that decision. Kelly Case pleads a purely state law issue, challenging the state judge's jurisdiction to render judgment. The Court of Appeals has spoken on the issue, applied the state's law, and affirmed that Judge Bastine

had jurisdiction. This court must follow that decision. The decree entered in the Bays dissolution is not void for want of jurisdiction.

III. REQUEST FOR CERTIFICATION

Kelly Case argues that "this court must ask the Supreme Court of Washington to certify the jurisdictional question that I have presented to this court in my summary judgment before moving forward on Judge Bastine's order." [Doc. 889 p. 2] (underscored in the original).

This request is an invitation to this court to invoke the provision of **R.C.W. 2.60.020 Federal Court Certification of Local Law Question**. This statute provides:

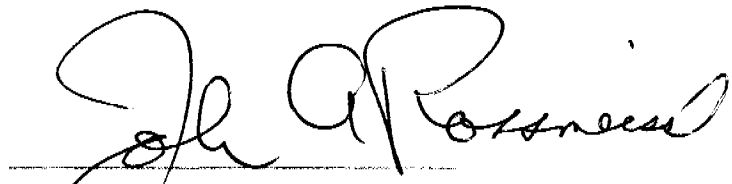
> When in the opinion of any federal court before whom a proceeding is pending, it is necessary to ascertain the local law of this state in order to dispose of such proceeding and the local law has not been clearly determined, such federal court may certify to the supreme court for answer the question of local law involved and the supreme court shall render its opinion in answer thereto.

Judge Bastine's jurisdiction to enter the Bays dissolution decree is solely a matter of state law. The state law on this exact issue has been "clearly determined" in In re Marriage of Bays, 131 Wash.App. 1032, 2006 WL 281143 (2006). It would be inappropriate for this court to certify the issue of Judge Bastine's jurisdiction to the Washington State Supreme Court.

CONCLUSION

Kelly Case is not **precluded** from challenging Judge Bastine's jurisdiction to enter the Bays dissolution decree. However his challenge fails on its merits. The relief requested in Kelly Case's "Summary Judgment Matter on Question of Challenge to Judge Bastine's Jurisdiction,..." [Doc. 873] and "Notice" [Doc. 889] should be denied. Judge Bastine had jurisdiction to enter the decree in the Bays dissolution. Kelly Case can not challenge it on the grounds that Judge Bastine had no jurisdiction.

Done this 24 day of August, 2010



JOHN A. ROSSMEISSL
U.S. BANKRUPTCY JUDGE

DECISION:
DOES THE BASTINE
JUDGMENT CONTROL
8/24/10