

*Boblitt v. Boblitt*

The well known phrase “been there done that” should apply only where it is true and accurate. In this case, in the dissolution action between the parties, the trial court considered wife’s claims that husband had committed acts of domestic violence, both before and during the marriage, in determining whether to award spousal support. This is a civil case filed subsequently which deals with an independent tort action for damages based on husband’s alleged domestic violence. The trial court granted husband’s Motion for Judgment on the Pleadings because the Judgment in the dissolution action (then on appeal) precluded wife from further litigating the domestic violence issues under the doctrine of *res judicata* and *collateral estoppel*. The Court of Appeal disagreed, finding that the trial court erred in granting husband’s Motion for Judgment on the Pleadings because a judgment on appeal is not “final” for purposes of applying the doctrines of issue and claim preclusion. The Court of Appeal also found that a Motion for Judgment on the Pleadings was improper because a request for spousal support in a dissolution proceeding is not based on the same primary right as a tort action based on domestic violence; as a result, a party is not precluded from seeking civil damages for alleged acts of domestic violence and asking a family law court to consider those same acts of domestic violence in awarding spousal support. The Court of Appeal reversed the trial court’s decision and remanded with instructions to deny husband’s Motion for Judgment on the Pleadings and to allow the civil tort claim to proceed.

Interesting questions not raised in the *Boblitt* opinion include what would have happened if the dissolution judgment was final and not on appeal? Would the tort action then have been precluded? It seems the answer would be no, based on the *Boblitt* Court of Appeal’s reasoning and rationale. Assuming that is true, if wife filed her tort action shortly after filing the dissolution action, would she have been required to file that action in the family court proceeding or could she file it as a separate action. This is a jurisdictional issue not free from doubt and not raised or discussed in the *Boblitt* opinion.

Absent from *Boblitt* altogether is the above-referenced doctrine of jurisdictional priority. If the dissolution action was pending in a family court at the time wife filed a domestic violence tort action in a civil court, a jurisdictional conflict would arise under California statutory and case law, as the family court has primary jurisdiction over the case.

It is not uncommon for jurisdictional conflicts to arise between various departments of the superior court, i.e., the family department and the civil law and motion or civil trial departments. The Constitution of the State of California, Article VI, Section 4, preserves the integrity of each department of a superior court by providing that judgments, orders and proceedings of any one “session” of the court held by any one or more judges of the court shall be equally effectual as though all of the superior court judges presided at the “session.” Jurisdiction is vested in the superior court of each county, not on a particular judge or

department. The department of a superior court to first exercise jurisdiction over a matter has “exclusive” jurisdiction until the matter is finally disposed of. (*Levine v. Smith* (2006) 145 Cal.App.4th 1131, 1135; *Glade v. Glade*(1995) 38 Cal.App.4th 1441 at 1449-1450. Consequently, once a marital dissolution case is pending in the family court, no other superior court department may act to interfere with the family court’s exercise of its powers in that proceeding. (*Dale v. Dale* (1998) 66 Cal.App.4th 1172, 1183; *Askew v. Askew* (1994) 22 Cal.App.4th 942, 961-962.) The rationale underlying the rule of priority of jurisdiction is clear. One reason for the rule is to avoid unseemly conflict between courts that might arise if they were free to make contradictory decisions or awards at the same time or relating under the same controversy. Another reason is to protect litigants from the expense and harassment of multiple litigation.

In *Neal v. Superior Court, supra*, 90 Cal.App.4th 22, the parties reached a stipulated agreement in the family law court concerning amounts the husband owed for division of property, spousal support, and child support. Six months later, the wife filed a motion to set aside the stipulation, alleging that the husband had paid none of the money he agreed to pay. The husband responded with a separate civil complaint alleging several causes of action. The trial court overruled wife’s demurrer to the complaint. The Court of Appeal in *Neal reversed, holding that* this was error; jurisdiction lay exclusively in the family law court. The husband may not pursue as a civil action what is essentially a family court matter. Family law cases should not be allowed to spill over into civil law, regardless of whether the family law matter may be characterized as a civil action, such as an action for fraud. Almost all events in family law litigation can be reframed as civil law actions if a litigant so desires. Courts must therefore examine the substance of claims, not just their nominal headings. In *Glade v. Glade, supra*, 38 Cal.App.4th at 1454-1455, the civil department improperly infringed upon the family court’s jurisdiction in a marriage dissolution action involving spouses’ community property notwithstanding a stay order issued by the family court.

Interestingly, neither the doctrine of priority of jurisdiction or the line of cases set forth above are referenced in the *Boblitt* opinion. While claim preclusion or issue preclusion did not bar wife’s primary right to file a tort action for damages for domestic violence, priority of jurisdiction may arguably have barred wife from filing such an action in a civil court. In any event, the overlapping issues of jurisdiction should be carefully considered when mapping out strategy to enforce a client’s basic primary rights in a family law context.

MARSHALL S. ZOLLA