IN THE

Supreme Court of the State of Florida

IN THE MATTER OF THE ESTATE OF EDWIN EASTER HASKIN, Deceased.

ALICE LITTIG HASKIN, also known as ALICE LITTIG SIEMS, *Appellant,*

vs.

WALTER E. HASKIN, individually and as Administrator of the Estate of Edwin Easter Haskin, Deceased and Loraine Haskin Evans, *Appellees.*

No.
Appeal to the Supreme Court

APPELLEES' BRIEF

WILLIAMSON, GUNSTER & BAUGHER
of Palm Beach,

COLEMAN & COOK
of West Palm Beach
and

CLEARY, GOTTLIEB, FRIENDLY & HAMILTON
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Attorneys for Appellees, Walter E. Haskin, individually and as Administrator of the Estate of Edwin Easter Haskin, Deceased, and Loraine Haskin Evans.

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IN THE

Supreme Court of the State of Florida

IN THE MATTER OF THE ESTATE OF EDWIN EASTER HASKIN, Deceased. ALICE LITTIG HASKIN, also known as ALICE LITTIG SIEMS, *Appellant,* *vs.* WALTER E. HASKIN, individually and as Administrator of the Estate of Edwin Easter Haskin, Deceased and Loraine Haskin Evans, *Appellees.*	No. Appeal to the Supreme Court

APPELLEES' BRIEF

History of the Case

The portion of Appellant's Brief entitled "History of the Case", contains certain misstatements and omits many material facts. The resulting error requires the Appellees to fully state the history of the case.

This is the second appearance of this Estate in this Honorable Court. On January 29, 1952, an order was entered herein affirming an order of the Circuit Court which affirmed an order of the County Judge's Court finally determining the beneficiaries of the estate (56 So. 2d 723, Fla. 1952).

Edwin Easter Haskin died a resident of Palm Beach County on October 23, 1949. Upon the petition of his

surviving brother and sister, Letters of Administration were issued to J. K. Williamson and George W. Coleman. On November 7, 1949, Notice to Creditors was published for the first time.

On May 15, 1950 the Appellant filed a claim to the entire estate asserting that Edwin Easter Haskin, during his lifetime orally contracted for valuable consideration, to make a will naming her beneficiary of his entire estate.

On July 8, 1950 the Administrators filed a petition for Determination of Beneficiaries pursuant to Section 734.25 of the Florida Statutes, 1949. In this petition, the Administrators prayed:

> "(a) For the entry of an order finding and adjudging who are entitled to the property of the Decedent and the shares and amounts which they are respectively entitled to receive.
>
> "(b) For the entry of an order herein determining who are or were the heirs, legatees or devisees of the Decedent."

In their answers to this petition Walter E. Haskin and Loraine Haskin Evans alleged that Edwin E. Haskin had left no surviving spouse, and that they were the only surviving heirs-at-law or next of kin of the Decedent. They denied that the Decedent had made any contract with the Appellant and denied that she was a beneficiary of the estate of Edwin E. Haskin.

Thereafter and about January 30, 1951, the Appellant served an answer to the petition of the Administrators in which answer she prayed that the entire estate be distributed to her and alleged that she was unmarried and that the Decedent was unmarried at the time of his death; that she had met the Decedent in 1942; that the acquaintance thereafter ripened into a close and intimate friendship and that in the Fall of 1944, she and Decedent entered into an oral agreement whereby in consideration of her com-

panionship, comfort, care and assistance, the Decedent promised to make a will leaving her the entire estate. She further alleged that the friendship, comfort and mutual understanding continued until his death.

The issues raised by the petition of the Administrators for the Determination of Beneficiaries and the Answers of the other parties thereto came on to be heard before the County Judge on April 3, 1951. On April 3, 4 and 5, the Appellant produced a large number of witnesses in support of her claim and on April 5th, she rested. Upon motion of the other parties, the County Judge on April 6, 1951 entered an order in which it was ordered, adjudged, decreed, found and determined as follows:

> "3. That the respondent Alice Littig Siems has no valid claim against the estate of the Decedent, *said respondent is not a beneficiary of the estate of Decedent and said respondent is not entitled to any distribution of all or any part of the assets left by the Decedent.*
>
> "4. *That the Decedent's sister, Loraine Haskin Evans and his brother, Walter E. Haskins, are the only heirs at law and next of kin of Decedent and the only beneficiaries of the estate of Decedent* * * *."

The Appellant thereupon appealed to the Circuit Court from the order of the County Judge's Court. After argument and submission of briefs by the several parties, the Circuit Court, on June 21, 1951, entered an order affirming the order of the County Judge's Court Determining Beneficiaries. The Appellant then appealed to this Honorable Court. After oral argument and submission of briefs by the several parties, this Honorable Court by opinion filed January 29, 1952, affirmed the order of this Honorable Court. *In re Estate of Haskin,* 56 So. 2d 723 (Florida 1952).

On March 30, 1952, the Appellant instituted a proceeding in the Circuit Court in which she sought a declaratory decree and prayed for, among other things, the following relief:

> "(3) * * * and that the court do determine and declare that the plaintiff Alice Littig Siems Haskin was the wife of Edwin E. Haskin at the time of his decease."

The Appellees and the then Administrators answered the aforesaid petition denying the allegations upon which the prayer for relief was based and moved for summary final decree. After hearing upon the motion, the Honorable C. E. Chillingworth, a Judge of the Circuit Court, dismissed the complaint with prejudice. In the final decree entered on May 26th, 1952, Judge Chillingworth said:

> "As I view the law, not only has the County Judge sole jurisdiction of this phase of the case but plaintiff is barred by res adjudicata".
>
> "Thereupon it is ordered that defendant's motion be granted and the Bill of Complaint dismissed with prejudice."

On June 4th, 1952 the Appellant filed a petition for Order Revoking the Appointment of Administrators and other relief. In this petition, the Appellant prayed for the revocation of the Letters of Administration that had been issued upon the petition of the surviving brother and sister of the Decedent; for the issuance of Letters of Administration to the Appellant and

> "* * * that the order designating Loraine Haskin Evans and Walter E. Haskin the lawful heirs of Edwin Easter Haskin, Deceased, be revoked and vacated and that your petitioner be designated the lawful heir and sole owner of said estate; * * *."

On June 6th, the Appellees and the then Administrators filed a motion for the dismissal of the said petition. The motion duly came on before the County Judge and after hearing the County Judge on June 12, 1952, entered an order dismissing the said petition with prejudice. The Appellant thereupon appealed to the Circuit Court. After hearing of the appeal, the Honorable C. E. Chillingworth, Circuit Judge, entered an order affirming the order of the County Judge's Court.

Statement of the Questions Involved

The Appellant's brief fails to conform to Rule 20 with regard to a concise statement without duplication or argument of the prime or controlling questions to be answered. The questions propounded by Appellant are based upon a misconstruction of the proceedings below and assume that the Appellees admitted the Appellant's allegation that she was the Decedent's common-law wife. In fact, the Appellees contended below not only that the Appellant was not the common-law wife of the Decedent but also that it was finally determined by a court of competent jurisdiction that she was not in any way a beneficiary of the Decedent's estate.

It is submitted that the only prime and controlling question upon this appeal is

> DOES THE DOCTRINE OF RES JUDICATA BAR A PETITION FILED IN THE COURT OF THE COUNTY JUDGE BY A WOMAN SEEKING A DETERMINATION THAT SHE IS THE SURVIVING SPOUSE AND SOLE HEIR OF A DECEDENT INTESTATE IN A CASE IN WHICH A FORMER ORDER OF THE COUNTY JUDGE, AFFIRMED BY THE CIRCUIT COURT AND BY THIS HONORABLE COURT ENTERED UPON A PETITION FOR THE DETERMINATION

OF BENEFICIARIES ADJUDGED ON THE MERITS THAT THE WOMAN WHO APPEARED AND WAS HEARD IN THE PROCEEDING WAS NOT A BENEFICIARY OF THE ESTATE OF THE DECEDENT, AND ADJUDICATED ON THE MERITS THAT THE DECEDENT LEFT NO SURVIVING SPOUSE AND THAT HIS SURVIVING BROTHER AND SISTER WERE HIS ONLY HEIRS AT LAW AND NEXT OF KIN?

This question was answered in the affirmative by the County Judge and by the Circuit Court.

ARGUMENT ON APPELLEES' FIRST QUESTION

Does the doctrine of *res judicata* bar a petition filed in the Court of the County Judge by a woman seeking a determination that she is the surviving spouse and sole heir of a Decedent intestate in a case in which a former order of the County Judge, affirmed by the Circuit Court and by this Honorable Court entered upon a petition for the determination of beneficiaries adjudged on the merits that the woman who appeared and was heard in the proceeding was not a beneficiary of the estate of the Decedent, and adjudicated that the Decedent left no surviving spouse and that his surviving brother and sister were his only heirs at law and next of kin?

In the Appellant's petition, she alleged that she was the common-law wife of the Decedent intestate, and she prayed for an order revoking Letters of Administration that had been issued to J. K. Williamson and Geo. W. Coleman upon the petition of the surviving brother and sister and for an order revoking and vacating the order of the County Judge entered April 6, 1951, in which it was

determined that Loraine Haskin Evans and Walter E. Haskin were the sole lawful heirs and next of kin of the Decedent, and designating the petitioner as the lawful heir and sole owner of the estate of the Decedent.

In the proceeding for the determination of beneficiaries which resulted in the order of April 6, 1951, citation was duly served upon the Appellant and upon the surviving brother and sister. The brother and sister asserted in their answers that the Decedent had died without surviving spouse and that the Appellant was not a beneficiary of the estate. The Appellant in her answer claimed that she was entitled to the distribution of the entire estate. The evidence of the petitioner in support of her claimed right to the entire estate was heard during the course of three trial days, at the end of which she rested. Upon the pleadings and evidence the County Judge entered an order in which he found and determined:

> "3. That the respondent Alice Littig Siems [the Appellant] has no valid claim against the estate of the decedent, said respondent is not a beneficiary of the estate of the decedent and such respondent is not entitled to any distribution of all or any part of the assets left by the decedent.
>
> "4. That the decedent's sister Loraine Haskin Evans and his brother Walter E. Haskin are the only heirs at law and next of kin of the decedent, and the only beneficiaries of the estate of the decedent, * * *."

The Appellant thereupon appealed from said order to the Circuit Court and after full hearing upon the appeal the Circuit Court affirmed the order of the County Judge. Thereupon, the present appellant appealed to this Honorable Court and after hearing of the appeal this Honorable Court affirmed the order appealed from by order entered January 29, 1952.

The granting of the Appellant's petition would be a determination that the Appellant had a right to Letters of Administration prior to that of the surviving brother and sister and would directly contradict the prior determination that the brother and sister were the sole heirs at law and next of kin and that the Appellant was not a beneficiary of the estate of the Decedent and was not entitled to any distribution of any part of the assets left by the Decedent. This would contravene the firmly established principle that an existing final judgment rendered on the merits by a court of competent jurisdiction is conclusive of rights, questions and facts in issue as to the parties and their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction or, as has been frequently stated, the judgment of the court of concurrent jurisdiction directly on the point is as a plea, a bar, or as evidence, conclusive between the same parties upon the same matter directly in question in another court. 30 American Jurisprudence 908.

In the prior proceeding, the appellant and the other parties all alleged that at the time of his decease, Edwin Easter Haskin was unmarried. The issue, therefore, of his marriage was not controverted at the trial. However, the appellant was cited in the proceeding which was expressly a proceeding to determine the beneficiaries, heirs at law and next of kin of the decedent. She was obliged to set forth all matters which might have entitled her to share as a beneficiary, heir at law or next of kin, and she was given a full opportunity to assert all such matters.

In *Knabb* v. *Duner,* 143 Fla. 92, 196 So. 456, 460 (May 1940), this Honorable Court stated:

> "And so it is that the well established rule, 'That a judgment on the merits, rendered in a former suit between the same parties or their privies, on

the same cause of action, by a court of competent jurisdiction, operates as an estoppel, not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action.' See Mabson *v.* Christ, 104 Fla. 606, 140 So. 671; Wade *v.* Clower, 94 Fla. 817, 114 So. 548; Jones *v.* Morgan, 59 Fla. 542, 52 So. 140. And to like effect is Prall *v.* Prall, 58 Fla. 496, 50 So. 867, 26 L.R.A.N.S., 577; Tilton *v.* Horton, 103 Fla. 497, 137 So. 801, 139 So. 142; Sauls *v.* Freeman, 24 Fla. 209, 4 So. 525, 12 Am. St. Rep. 190; Hay *v.* Salisbury, 92 Fla. 446, 109 So. 617; Peacock *v.* Feaster, 52 Fla. 565, 42 So. 889; Barse *v.* Whaley, 102 Fla. 404, 135 So. 879; Fidelity & Casualty Co. *v.* Magwood, 107 Fla. 208, 145 So. 67; State *v.* Wright, 107 Fla. 178, 145 So. 598; Town of Boca Raton *v.* Moore, 122 Fla. 350, 165 So. 279. See also McAdoo *v.* International Realty Associates, Inc., supra."

In *Caldwell* v. *Mass. Bonding and Insurance Co.,* 29 So. 2d 694 (Florida, 1947) this Honorable Court reaffirmed the doctrine of *Knabb* v. *Duner* and quoted with approval the following statement from 30 American Jurisprudence, page 910:

> "The doctrine of res adjudicata rests upon the ground that the party to be affected or some other with whom he is in privity has litigated or had an opportunity to litigate the same matter in a former action in a court of competent jurisdiction and should not be permitted to litigate it again to the harassment and vexation of his opponent."

In *Wolfson* v. *Rubin,* 52 So. 2d 344 (April 1951), this Honorable Court stated:

> "Even if the matter had not been directly submitted, as we think it was, it would have fallen in

> the rule so often announced that a judgment on the merits in a suit between the same parties on the same cause of action by a court of competent jurisdiction operates as an estoppel, not only as to matters offered, but also 'as to every other matter which might with propriety have been litigated and determined in that action.' "

In her petition, Appellant prayed for vacation and revocation of the prior order determining beneficiaries and for an order determining that she was the sole beneficiary. This prayer called up the record of the proceeding for the determination of beneficiaries. The record disclosed that the present appellant was cited to show all of her defenses to the petition for the determination of beneficiaries. The facts alleged in her present petition, if true, would have constituted a defense and would have entitled her to the relief now prayed for. It is therefor apparent that the ground for relief asserted in the petition is identical with the available defense she failed to assert. It is clear that the doctrine of *res adjudicata* as distinguished from estoppel by judgment has application. In such case, as was stated by this Honorable Court in *Gordon* v. *Gordon* (59 So. 2d 40, 44), the prior judgment or decree

> "is conclusive as to all matters germane thereto and that were or could have been raised * * *."

This principle that a judgment on the merits is conclusive not only as to all matters which were decided but also as to all matters which might have been decided and the principle that matters of defense not interposed in the prior action are subject to *res judicata* finds support not only in Florida but in other jurisdictions.

> *Clonts* v. *Spuraway,* 104 Fla. 340, 139 So. 896;
> *Gunter* v. *Atlantic Coastline Railway Co.,* 200 U. S. 273;

Fishgold v. *Sullivan Dry Dock & Repair Corp.*, 167 A. L. R. 110, 328 U. S. 275, 66 S. Ct. 1105;
First Natl. Bank v. *U. S. Fidelity & Guarantee Co.*, 162 A. L. R. 1003, 207 S. C. 15, 35 S. E. 2d 47;
Pappe v. *Law*, 95 A. L. R. 939, 169 Okla. 15, 35 P. 2d 941;
Guettel v. *United States*, 118 A. L. R. 1060, 95 F. 2d 229;
Chamblin v. *Chamblin*, 104 A. L. R. 1183, 362 Ill. 588, 1 N. E. 2d 73.

It is submitted that the Appellant's petition for revocation of Letters of Administration was barred not only because the final adjudication in the prior proceeding was precisely upon the point which the petition sought to raise but also because it raised an issue which she was obliged to and had full opportunity to interpose in the prior proceeding.

Moreover, Appellant was precluded by the fundamental principle that material facts or questions which were in issue in a former action and were there admitted, or judicially determined, are conclusively settled by a judgment rendered therein, and that such facts or questions become *res adjudicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form the issue may take in the subsequent action.

One of the ultimate facts alleged by the Administrators, by Walter E. Haskin and by Loraine Haskin Evans in the prior proceeding was that the Decedent was unmarried at the time of his death. This ultimate fact was also alleged by the Appellant in her answer to the administrators petition for determination of beneficiaries. The County Judge's Court, on the basis of these allegations

and after hearing Appellant and her witnesses, determined that the Decedent's brother and sister were his sole heirs-at-law and next of kin. This was a determination that the Decedent was unmarried at the time of his death. Hence, the Appellant cannot have relief which would have to be based upon a determination that the Decedent was married at the time of his death. See *Tilton* v. *Horton,* 103 Fla. 497, 137 So. 801, *Wade* v. *Clower,* 94 Fla. 817, 114 So. 548, *Hay* v. *Salisbury,* 92 Fla. 446, 109 So. 617.

In *Hay* v. *Salisbury, supra,* this Honorable Court held that the judgment in a prior proceeding is conclusive not only as to every question decided but as to every other matter which the parties might have litigated within the issues, or as an incident to, or essentially connected with the subject matter of the litigation. It quoted with approval the following language from *Jackson* v. *Bullock,* 62 Fla. 507, 57 So. 355.

> "When the second suit is between the same parties as the first, and on the same cause of action, the judgment in the former is conclusive in the latter not only as to every question which was decided, but also as to every other matter which the parties might have litigated and had determined, within the issues as they were made or tendered by the pleadings or as incident to or essentially connected with the subject-matter of the litigation, whether the same, as a matter of fact, were or were not considered. As to such matters a new suit on the same cause of action cannot be maintained between the same parties. This rule applies to every question falling within the purview of the original action, both in respect to matters of claim and defense, which could have been presented by the exercise of due diligence." 15 R.C.L. p. 963.
>
> "A judgment on the merits is an absolute bar to a subsequent action on the same claim, and concludes the parties and their privies, not only as to

every matter which was offered and received to sustain or defeat the claim, but also as to any other admissible matter that might have been offered for either purpose." Sauls *v.* Freemann, 24 Fla. 209, 4 So. 525, 12 Am. St. Rep. 190.

In *Mattair* v. *Card,* Adm'r. 19 Fla. 455, this Honorable Court said:

> "A judgment or decree unreversed is conclusive upon parties and estops them from setting up in a new suit brought to annul or set it aside, any matter of defense of which the parties could have availed themselves in the original proceeding, the evidence of the facts constituting the defense having been known to the parties in due time."

The principle that the failure to plead a defense does not prevent the prior judgment from being conclusive as to the matter of defense is emphasized by the following language from *Hay* v. *Salisbury, supra.*

> "While the decree relied upon as having adjudicated the rights claimed by the appellant in the instant suit was by default or upon decree pro confesso, yet it does not prevent the decree being conclusive and binding between the parties as to the matters litigated. 15 R.C.L. p. 987, par. 461; United States ex rel. George W. Harshmann *v.* County Court of Knox County, 122 U. S. 306, 7 S. Ct. 1171, 30 L. Ed. 1152."

The Appellant's contention that the Appellees should have been required to answer in order to object to the petition on the ground of prior adjudication is without merit.

Section 732.08 F.S.A. provides:

> "Either party may test the sufficiency of an adversary's pleading, or any part thereof by motion".

In *Caldwell* v. *Massachusetts Bonding & Insurance Co., supra,* this Honorable Court passed upon the propriety of dismissal of a complaint before answer upon motion, stating:

> "The appellant contends that the record of the former judgment was not properly presented to the court below and that it should have been presented by plea. It seems to us that there was no reversible error committed by the court below in considering the former record when brought to its attention in the manner in which it was accomplished in this case. The record was specifically presented to the court and the appellant admits that both suits were on the same cause of action but he contends that in his second suit he had shown elements of damage not alleged in his first suit."

In the instant case the record in the prior action was brought to the attention of the court by the motion in the same manner as in the *Caldwell* case. Moreover in the instant case, the Appellant's petition, praying for the vacation of the order determining beneficiaries, necessarily called up the record of the prior proceeding. Both from the record and from the motion papers, it is abundantly clear that the prior determination was an adjudication on the merits between the same parties by a court of competent jurisdiction.

It is significant that although the Appellant sought the vacation of the order of April 6, 1952, her petition alleged no grounds for vacation such as fraud, duress, excusible neglect, newly discovered evidence or the like. It merely alleges facts which she had ample opportunity to set forth in answer to the Administrator's petition for determination of beneficiaries. The rule is well settled in all jurisdictions that a proceeding to open or vacate a judgment may not be sustained on grounds which involve the merits

of the controversy adjudicated or which might have been pleaded in defense of the action. 31 Amer. Jurisprudence, p. 294, Judgments, §755, 95 A.L.R. 1263.

In *Malone* v. *Topfer,* 125 Md. 157, 93 A. 397, it was held that a judgment will not be vacated on the theory that defendant had a meritorious defense where he did not claim to be surprised and at the trial made no effort to present the defense.

CONCLUSION

The appellees submit that the order of the Circuit Court entered July 2nd, 1952 affirming the order of the County Judge entered June 12, 1952 dismissing the petition for order revoking appointment of administrators and other relief should be affirmed by this Honorable Court.

Respectfully submitted,

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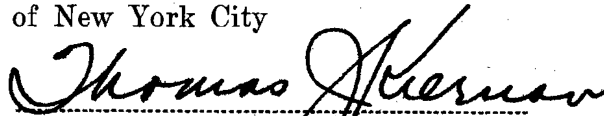
By 

Attorneys for Appellees, Walter E. Haskin, individually, and as Administrator of the Estate of Edwin Easter Haskin, Deceased, and Loraine Haskin Evans.