

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0147, Town of Candia v. Clarence Blevens, Jr., the court on September 29, 2005, issued the following order:**

Having considered the briefs and the record submitted on appeal, we conclude that oral argument is unnecessary for the disposition of this appeal. The respondent, Clarence Blevens, Jr., appeals the trial court's denial of his motion for a temporary restraining order and an immediate hearing upon what items on his property constitute "junk." We affirm.

We agree with the petitioner, the Town of Candia, that the court properly denied the respondent's motion under the doctrine of res judicata.

"Res judicata . . . bars the relitigation of any issue that was, or might have been, raised in respect to the subject matter of the prior litigation." McNair v. McNair, 151 N.H. 343, 352-53 (2004) (quotation omitted). "A default judgment can . . . constitute res judicata with respect to a subsequent litigation involving the same cause of action." *Id.* (quotation omitted). For res judicata to apply, three elements must be met: (1) the parties must be the same or in privity with one another; (2) the same cause of action must be before the court in both instances; and (3) a final judgment on the merits must have been rendered on the first action. N. Country Envtl. Servs. v. Town of Bethlehem, 150 N.H. 606, 620 (2004). The term "cause of action" means the right to recover and refers to all theories on which relief could be claimed arising out of the same factual transaction. *Id.* When a declaratory judgment is at issue, the grant of such a judgment "conclusively settles the issues present to the trial court regarding the parties' rights." *Id.* at 621.

Res judicata barred the respondent's September 2004 motion because the two issues the motion raised were the subject of the trial court's June 2004 decree, which, after he failed to appeal it, constituted a final judgment on the merits of the Town's petition. See Super Ct. R. 74; see also Arsenault v. Scanlon, 139 N.H. 592, 593 (1995).

The two issues the respondent raised in his post-decree motion were: (1) whether the Town could enter his property to remove junk; and (2) what items in his property are deemed junk. The trial court's final decree addressed both of these issues. It gave the Town the right to enter the respondent's property to remove the junk and it deemed admitted the Town's factual allegations as to what items were junk. To the extent that the respondent disagreed with the

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trial court's final decree, he could have moved for reconsideration of it or appealed it. Having failed to challenge the decree in a timely fashion, he was barred by the doctrine of res judicata from doing so in his post-decree motion.

Contrary to his assertions, it is immaterial that the respondent filed his motion on the same docket as the Town's petition. Litigation on the Town's petition concluded with entry of the court's final judgment on the petition's merits. See Arsenault, 139 N.H. at 593-94. Accordingly, we hold that the trial court sustainably exercised its discretion when it denied the respondent's post-decree motion.

We decline to address the respondent's remaining arguments because they lack merit and warrant no extended discussion or because he has failed to demonstrate that he preserved them for our review. See Vogel v. Vogel, 137 N.H. 321, 322 (1993); see also State v. Blackmer, 149 N.H. 47, 48-49 (2003).

In light of our decision, the Town's motion to dismiss the respondent's appeal is moot.

Affirmed.

Broderick, C.J., and Dalianis, Duggan and Galway, JJ., concurred.

**Eileen Fox,  
Clerk**

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