

Crosby-Garbotz v. Fell in & for County of Pima

Full Citation: Crosby-Garbotz v. Fell in & for County of Pima, No. CR-18-0050-PR, 2019 WL 438194 (Ariz. Feb. 5, 2019).

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Opinion's Author: Chief Justice Bales

Joined By: Vice Chief Justice Brutinel and Justices Pelander and Bolick

Practitioners: For quick reference, please see the "Issue" and "Holding" sections.

Facts: Nikolas Crosby-Garbotz ("Defendant") stayed home with his five-month old daughter while the mother went to work. The baby became fussy and later had a seizure. The baby was taken to the hospital and diagnosed with subdural hematoma, bilateral retinal hemorrhaging, and retinoschisis. The Department of Child Safety ("DCS") later took temporary custody of the baby and filed a dependency petition alleging Crosby abusively shook the baby to the point of causing bleeding in her brain and eyes.

Procedural History: The case is currently before the Arizona Supreme Court. DCS filed a dependency petition alleging Defendant abused his five-month-old daughter. The judge ruled that DCS did not meet its burden of proving by a preponderance of the evidence that Defendant inflicted physical injury, impairment of bodily function, or disfigurement to the baby.

Separately, the State charged Defendant for child abuse, and Defendant moved to dismiss charges based on issue preclusion. The Superior Court, Pima County, Howard P. Fell, J., denied the motion. Defendant sought special action relief in the Court of Appeals but was denied.¹ The court of appeals noted that most elements of issue preclusion appeared to have been met,² but declined to apply preclusion.³ The court concluded that preclusion should not apply in these circumstances because (1) "the [S]tate might forego dependency proceedings if it were precluded from relitigating issues in a later criminal proceeding, or it might instead present its criminal case in the dependency proceeding which 'could unnecessarily complicate . . . adjudication,'"⁴ (2) "the distinction between juvenile and criminal proceedings would be impermissibly blurred,"⁵ and (3) the court refused to adopt a case-by-case approach to applying issue preclusion in this context.⁶

The Arizona Supreme Court granted review because the case presents recurring issues of statewide importance.⁷

¹ Crosby-Garbotz v. Fell, 418 P.3d 1112, 1115 (Ariz. Ct. App. 2017).

² *Id.* at 1117.

³ *Id.* at 1118.

⁴ Crosby-Garbotz v. Fell in and for County of Pima, No. CR-18-0050-PR, 2019 WL 438194, at *2 (Ariz. Feb. 5, 2019) (citing *Crosby-Garbotz*, 418 P.3d at 1120).

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

Issue: Whether a finding in a dependency adjudication may have preclusive effect in a criminal prosecution.

Holding: Defendant's dependency adjudication dismissal had a preclusive effect in Defendant's criminal prosecution.

Disposition: The Arizona Supreme Court vacated the court of appeals' opinion and remanded the case to the superior court to dismiss the criminal charge.

Rule: Issue preclusion may apply in a criminal proceeding when an issue of fact was previously adjudicated in a dependency proceeding and the other elements of preclusion are met.

Reasoning:

- **Issue Preclusion:** This court began by explaining that issue preclusion is used to “protect[] litigants from the burden of relitigating an identical issue” and to “promot[e] judicial economy by preventing needless litigation.”⁸ Issue preclusion applies when a fact “was actually litigated in a previous suit, a final judgment was entered, and the party against whom the doctrine is to be invoked had a full opportunity to litigate the matter and actually did litigate it” and the fact “was essential to the prior judgment.”⁹ In criminal cases, for preclusion to apply, this court explained that it also “require[s] mutuality of parties or their privities as an additional element of issue preclusion.”¹⁰
- **Comparison to *Ferris and Fitzgerald*:** This court addressed the application of two issue preclusion cases that the court of appeals analyzed. This court explained that both cases are inapplicable here. *Fitzgerald* involved “a ‘quasi-criminal’ forfeiture proceeding and a later criminal proceeding,”¹¹ and *Ferris* addressed “successive administrative proceedings in which the state may not have had adequate opportunity and incentive to fully litigate the issue in question in the first proceeding.”¹² This court recognized that the court of appeals instead relied on public policy to adopt a categorical rule barring issue preclusion.¹³
- **Comparison to *Lockwood*:** This court also referred to the *Lockwood* decision that the court of appeals analyzed.¹⁴ In *Lockwood*, the state brought a dependency petition

⁸ *Id.* (citing *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979)).

⁹ *Id.* (citing *Chaney Bldg. Co. v. City of Tucson*, 716 P.2d 28, 30 (Ariz. 1986); see also RESTATEMENT (SECOND) OF JUDGMENTS § 27 (AM. LAW INST. 1982).

¹⁰ *Id.* (citing *State v. Edwards*, 665 P.2d 59, 70 (Ariz. 1983)).

¹¹ *Id.* at *3 (citing *Fitzgerald v. Superior Court in & for County of Maricopa*, 845 P.2d 465, 471–72 (Ariz. Ct. App. 1992)).

¹² *Id.* (citing *Ferris v. Hawkins*, 660 P.2d 1256, 1259 n.3 (Ariz. Ct. App. 1992)).

¹³ *Id.*

¹⁴ *Id.*

against both parents alleging abuse, and later filed criminal charges.¹⁵ The California Court of Appeals held that collateral estoppel applied to preclude prosecution of parents for felony child abuse, after dependency petition on same facts on behalf of child was dismissed by juvenile court.¹⁶ The court of appeals referenced other courts who disagreed with *Lockwood* for various policy reasons, but this court did not find those reasons persuasive.¹⁷ Some policy reasons included a concern that the state does not perform extensive preparation in dependency proceedings as typically required for felony trials, dependency and criminal proceedings serve “disparate” purposes, and the issue of having differing objectives in juvenile versus criminal proceedings.”¹⁸

- **Public Policy:** This court did not find public policy concerns compelling for the court of appeals’ support of a blanket rejection of issue preclusion.¹⁹ This court explained that although the purposes of dependency and criminal proceedings differ, both affect liberty interests and fundamental rights.²⁰ Accordingly, this court rejected the contention that dependency proceedings are any less serious than a criminal prosecution, while also rejecting the notation that “the state will forego dependency proceedings if issue preclusion may apply.”²¹ This court also dismissed the concern that the State “might be compelled to present its entire criminal case in the dependency proceeding”²² by stating that “if the state cannot prove a dispositive fact under the preponderance standard, it is unlikely to be able to do so, absent new or additional evidence, in a subsequent criminal proceeding under the more-demanding standard of beyond a reasonable doubt.”²³ (3) This court rejected the State’s argument that applying issue preclusion is contrary to public policy.²⁴ The State’s rationale relied on the public’s strong interest in the enforcement of criminal laws.²⁵ This court noted that the public also has a strong interest in dependency proceedings.²⁶
- **Dependency vs. Criminal Proceedings:** This court recognized that purposes of dependency and criminal proceedings are different but explained that issue and claim preclusion are also different.²⁷ This court noted that even if “two types of cases have different purposes, [that] does not affect the application of issue preclusion, but rather informs the application of claim preclusion.”²⁸ Also, this court explained that the elements of preclusion already in place serve to ensure a full and fair opportunity

¹⁵ *Id.* (citing *Lockwood v. Superior Court*, 206 Cal. Rptr. 785, 786 (Cal. Ct. App. 1984)).

¹⁶ *Id.* (citing *Lockwood*, 206 Cal. Rptr. at 787).

¹⁷ *Id.* at *3–4.

¹⁸ *Id.* at *3 (citations omitted).

¹⁹ *Id.* at *4.

²⁰ *Id.*

²¹ *Id.* (citing *Crosby-Garbotz*, 418 P.3d at 1120).

²² *Id.* (quoting *Crosby-Garbotz*, 418 P.3d at 1120).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* (citing *Lockwood*, 206 Cal. Rptr. at 787).

to litigate an issue.²⁹ Finally, this court analyzed the question of preclusion from dependency to criminal proceedings with preclusion principles.³⁰ The court found that it complies with precedent and the Restatements.³¹

- **Application:** Once determining that issue preclusion may apply from dependency to subsequent cases, this court applied the rule to the case at bar.³² The State did not address the concern of mutuality of parties and this court determined that there was mutuality of parties; the State (through DCS and the County Attorney), brought the dependency and criminal proceedings against the Defendant even though the State did so through different offices.³³ This court also determined that the issues in both cases were the same: “whether [Defendant] abused [the baby] on July 5, 2016, by shaking her, causing bleeding in [the baby]’s brain and eyes.”³⁴ This court recognized that the issue was fully and fairly adjudicated during the dependency proceeding.³⁵ Since the State did not choose to appeal the dependency proceeding, this court explained that the State cannot require the Defendant to relitigate the same issue.³⁶

²⁹ *Id.* at *5 (citing *Chaney Bldg. Co.*, 716 P.2d at 30).

³⁰ *Id.* at *4.

³¹ *Id.* (citations omitted).

³² *Id.* at *5.

³³ *Id.*

³⁴ *Id.* at *6.

³⁵ *Id.*

³⁶ *Id.*