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1999 Survey of Rhode Island Law: Cases: Civil Procedure

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Civil Procedure. *Catanzaro v. Central Congregational Church*, 723 A.2d 774 (R.I. 1999). Prejudgment interest continues to accrue on a judgment during the pendency of the judgment-creditor's appeal when the judgment-debtor makes a conditional offer of payment. The Rhode Island Supreme Court's previous decision in *Paola v. Commercial Union Assurance Co.* (Paolo II),[1] holding that a judgement-creditor should not benefit from an award of post-judgment interest where the delay in payment is due to the judgment-creditor's unsucessful appeal, does not apply where a judgment-debtor only makes a conditional offer of payment.

FACTS AND TRAVEL

On August 16, 1991, William Catanzaro (Catanzaro), while employed by Eastern Construction Company, was injured during renovations of the Central Congregational Church.[2] Catanzaro filed a personal injury action against Central Congregational Church (Central), claiming that Central negligently maintained the premises in a hazardous condition.[3] The jury returned a verdict for Catanzaro in the amount of $400,000, finding that Catanzaro was fifty percent comparatively negligent.[4]

Catanzaro moved for reapportionment of liablity, or for a new trial on the issue of liability.[5] The trial justice denied the motion, and Catanzaro filed his first appeal to the Rhode Island Supreme Court, alleging that the trial justice failed to perform an individual evaluation of the evidence.[6] In a per curiam decision, the supreme court denied Catanzaro's appeal and affirmed the decision of the trial justice, finding that the record contained sufficient evidence for the jury to conclude Catanzaro was partially at fault.[7]

On remand, Catanzaro requested execution of the judgment, plus statutory interest from the time of the injury until the court's per curiam decision.[8] Adhering to the holding of *Paola II*, a supe-

1. 490 A.2d 498, 499 (R.I. 1985).
2. *See* Cantanzaro v. Central Congregational Church, 705 A.2d 533, 534 (R.I. 1998).
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.* at 535.
8. *See* Catanzaro v. Central Congregational Church, 723 A.2d 774, 775 (R.I. 1999).

rior court justice agreed with Central's argument that Catanzaro was not entitled to collect interest on the judgment during the pendency of his unsuccessful appeal.[9] Accordingly, the trial justice held that the judgment ceased to earn interest on the date that Catanzaro filed his notice of appeal to the Rhode Island Supreme Court.[10] Thereafter, Catanzaro filed the instant appeal to the court, claiming that Rhode Island General Laws section 9-21-10 entitled him to statutory interest on the judgment, running from the date of the injury until the date of the denial of Catanzaro's appeal.[11]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court framed the central issue in this case as whether a judgment creditor has a right to prejudgment interest accrued pending their own unsuccessful appeal.[12] Turning to its decision in *Paola II*, the court reiterated the policy justifying denial of interest during pendency of an appeal.[13] The court stated, "a judgment creditor who undertakes an unsuccessful appeal should not be allowed to collect interest during pendency of the appeal [because it is] the creditor's own act [that renders the] collection of the judgment impossible."[14] The rule applies equally to those seeking prejudgment or postjudgment interest, because the purpose of the rule is to discourage creditors from inflating their awards by filing frivolous appeals.[15]

The court then held that the facts of the instant case distinguished it from *Paola II*.[16] Prior to Catanzaro's unsuccessful appeal, Central sent Catanzaro a letter offering to satisfy the judgment, but refused to pay interest accrued on the judgment until the resolution of Catanzaro's appeal.[17] Although Central argued that this letter constituted an unconditional offer of payment,

9. *See id.*
10. *See id.*
11. *See id. See also* R.I. Gen. Laws § 9-21-10(a) (1956) (1997 Reenactment) (providing that in civil actions in which pecuniary damages are awarded, interest at a rate of twelve percent should be added "from the date the cause of action accrued").
12. *See Catanzaro*, 723 A.2d at 776.
13. *See id.*
14. *Id.*
15. *See id.*
16. *See id.*
17. *See id.* at 776-77.

the supreme court disagreed.[18] The court concluded that Central's offer of payment was conditioned on Catanzaro's agreement to forego an appeal.[19] Since Central's offer of payment was not unconditional, it was not Catanzaro's act that made collection of the judgment impossible, but rather the conditions imposed by Central.[20] In closing, the court pointed out that an unconditional offer of payment would have triggered the application of *Paola II* and prevented the accrual of prejudgment interest.[21] However, because Central's offer of payment was conditional, Catanzaro was entitled to collect prejudgment interest on the judgment up until the date of the disposition of the present appeal.[22]

CONCLUSION

Where a judgement-creditor brings an ultimately unsuccessful appeal, the *Paola II* rule prevents the creditor from collecting interest on the judgment only if the judgment-debtor makes an unconditional offer of payment. Where the offer of payment is conditional, it is the action of the judgment-debtor, and not the judgment-creditor, that delays collection of the judgment.

John B. Garry

18. *See id.* at 777.
19. *See id.*
20. *See id.*
21. *See id.*
22. *See id.*

Civil Procedure. *Hall v. Insurance Co. of North America*, 727 A.2d 667 (R.I. 1999). Whether or not a plaintiff has exercised due diligence in discovering the identity of an unknown defendant may be decided by a trial justice, rather than a jury, where the facts suggest only one reasonable inference.

FACTS AND TRAVEL

In *Hall v. Insurance Co. of North America*,[1] police officer Charles E. Hall (Hall) was injured when he fell in a stairwell at the East Providence police station on November 6, 1984.[2] Hall filed a civil action for negligence against DeStefano Building Co. and a John Doe corporation on October 16, 1987.[3] Hall amended his complaint on May 9, 1989, by adding Insurance Company of North America in place of the designated John Doe defendant.[4] Three years and nine months later, Hall amended his complaint for a second time to include Robinson Green Berretta Corporation (RGB) as a defendant.[5] At the time of the second amended complaint, the statute of limitations had run on Hall's claim.

Thereafter, RGB motioned for summary judgment, which was granted by the superior court on the grounds that Hall's failure to retain a "John Doe" defendant in his first amended complaint precluded him from naming RGB in his most recent complaint.[6] The Rhode Island Supreme Court reversed this decision in *Hall v. Insurance Co. of North America*,[7] finding that Hall's failure to include a "John Doe" defendant "did not completely cut off" Hall's joining of RGB.[8] Because the question of whether due diligence had been exercised by Hall in joining RGB as a defendant was not determined by the superior court, the supreme court remanded for a determination of that issue.[9]

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1. 727 A.2d 667 (R.I. 1999) [hereinafter Hall II].
2. *See id.* at 668.
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. 666 A.2d 805 (R.I. 1995) [hereinafter Hall I].
8. *Id.* at 806.
9. *See id.*

On remand, the superior court found that Hall had not exercised due diligence and summary judgment was granted in favor of RGB.[10] Hall appealed.[11]

ANALYSIS AND HOLDING

In his second appeal to the Rhode Island Supreme Court, Hall argued that the question of whether due diligence had been exercised was a question of material fact that could not be decided in a summary judgment proceeding because it must be determined by a jury.[12] The supreme court rejected this argument, stating that Hall misconstrued its order in *Hall I* as well as subsequent case law on the subject.[13]

In *Hall I*, the supreme court believed there was only one reasonable inference to be drawn concerning whether due diligence had been exercised by the plaintiff.[14] Therefore, the court expressly ordered that the trial justice determine this factual issue as a preliminary question before ruling on the motion for summary judgment.[15] When only one reasonable inference can be drawn from the facts concerning whether or not due diligence has been exercised, the issue may become a matter of law.[16] Under those circumstances, the superior court should resolve this factual question as a preliminary issue before determining whether the statute of limitations has run prior to the addition of the defendant.[17] It is only where the facts surrounding plaintiff's exercise of due diligence are susceptible to more than one determination that the issue must be determined by a jury.

The Rhode Island Supreme Court next turned to the issue of whether the addition of RGB in Hall's second amended complaint should relate back under Rule 15 of the Superior Court Rules of

10. *See Hall II*, 727 A.2d at 668.

11. *See id.*

12. *See id.*

13. *See id. See also* Grossi v. Miriam Hospital, 689 A.2d 403 (R.I. 1997) (holding that summary judgment could not be entered as a matter of law where the facts permitted more than one reasonable inference regarding whether plaintiff acted with due diligence in identifying and locating the defendant).

14. *See Hall I*, 666 A.2d at 806.

15. *See id.*

16. *See Hall II*, 727 A.2d at 668.

17. *See id.*

Civil Procedure.[18] Rule 15 permits an amendment to relate back only where there has been an error made concerning the identity of the proper party and where that party would be chargeable with the knowledge of that mistake.[19] The rule was not intended to "'permit relation back where . . . *there is a lack of knowledge of the proper party*.'"[20]

Applying these principles, the supreme court announced a two-step process that may be employed by the hearing justice. First, the hearing justice may determine whether plaintiff exercised due diligence in ascertaining the identity of an unknown defendant.[21] This is a factual determination to be made before any final ruling on the motion for summary judgment.[22] Second, if the hearing justice finds that the plaintiff has not exercised due diligence, the trial justice may deny relation back of the amended complaint and grant summary judgment as a matter of law in favor of the newly named defendant.[23] If, however, the hearing justice finds that the facts suggest due diligence has been exercised in discovering the identity of the previously unknown defendant, the justice must then determine two other factors before allowing the relation back to the filing date of the original complaint.[24]

These two factors are set out in Rules 15 and 4 of the Superior Court Rules of Civil Procedure.[25] The first factor is whether within 120 days after the commencement of the plaintiff's action, the added party received such notice of the filing of the action so as not to be prejudiced in maintaining a defense on the merits.[26] The second factor is whether within the 120-day period, the party knew or should have known that, but for the plaintiff's mistake concerning his or her identity, he or she would have been named a party in the original complaint.[27]

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18. *See id.* at 669.

19. *See id.*; R.I. Super. Ct. R. Civ. P. 15.

20. *Hall II*, 727 A.2d at 669 (quoting Wilson v. United States Government, 23 F.3d 559, 563 (1st Cir. 1994)).

21. *See id.*

22. *See id.*

23. *See id.* at 670.

24. *See id.*

25. *See id.*

26. *See id.*

27. *See id.*

Noting that the superior court found Hall did not pursue the identity of RGB with due diligence, the Rhode Island Supreme Court held that the trial justice properly entered summary judgment in favor of RGB.[28] Therefore, it was not necessary for the superior court to consider whether Hall's second amended complaint should relate back under Rule 15 of the Superior Court Rules of Civil Procedure.

CONCLUSION

In *Hall v. Insurance Co. of North America*, the Rhode Island Supreme Court affirmed the superior court decision to grant RGB summary judgment. In so doing, the court held that a trial justice may decide, as a preliminary factual issue in a motion for summary judgment, whether a plaintiff exercised due diligence in determining the identity of an unknown defendant where the facts support only one reasonable inference.

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28. *See id.*

Civil Procedure. *Jackson v. Medical Coaches*, 734 A.2d 502 (R.I. 1999). Rule 60(b) of the Superior Court Rules of Civil Procedure does not provide relief for judgments based on an error of law. A motion to dismiss for untimely service of process is governed by Rule 4(*l*) of the Superior Court Rules of Civil Procedure rather than the more general Rule 41(b)(2).

FACTS AND TRAVEL

In *Jackson v. Medical Coaches*,[1] the plaintiff, Patricia V. Jackson (Jackson), injured herself while trying to retrieve a stretcher from a mobile-medical trailer, when a hand crank hit her head as she was attempting to open a roll-up door.[2] She filed a complaint against defendants Medical Coaches and Siemans Medical Systems, Inc. (Siemans).[3] Both Medical Coaches and Siemans filed motions pursuant to Rules 12(b)(5) and 41(b)(2) of the Superior Court Rules of Civil Procedure to dismiss Jackson's claims, alleging that they had not been served with process until over four months after she had filed her complaint.[4] The superior court justice held a hearing on the defendants' motions and dismissed Jackson's complaint with prejudice.[5] Final judgments were entered as to both defendants pursuant to Rule 54(b).[6]

Jackson did not appeal from either judgment, but filed a second action against the two defendants which was identical to her first complaint.[7] The defendants moved for summary judgment on the grounds that the statute of limitations and res judicata barred her claims.[8] These motions were granted by the court but the entry of judgment was stayed for thirty days in order to allow Jackson to file a motion to vacate the judgment on her first complaint.[9] Jackson filed the motion to vacate almost three months later and mistakenly filed the motion in the second action rather than the first case, but because she had filed a memorandum of law in support of her motion within the thirty days, the superior court heard

1. 734 A.2d 502 (R.I. 1999).
2. *See id.* at 503.
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*

the motion.[10] The superior court granted the motion and an order was entered stating that the first complaint was dismissed without prejudice.[11] The defendants appealed.[12]

ANALYSIS AND HOLDING

Defendants argued that Jackson should not have filed a motion to vacate pursuant to Rule 60(b) because the error in this case, the trial justice's error in dismissing the case with prejudice, is not the type of "mistake" contemplated by Rule 60(b).[13] The supreme court agreed with this argument, noting that "Rule 60(b)(1) permits relief from the operation of a judgment due to mistake, inadvertence, surprise, or excusable neglect. . . [and] Rule 60(b)(6) provides relief from judgment for 'any other reason justifying relief.'"[14] The court pointed out, however, that Rule 60(b) is not a "catchall,"[15] relief is justified only under extraordinary circumstances,[16] and that neither 60(b)(1) nor 60(b)(6) were available to Jackson.[17]

Jackson argued at the hearing on her motion to vacate that Rule 4(*l*) and Rule 41(b)(2) were in conflict with each other.[18] She claimed that her situation was governed by Rule 4(*l*) and therefore her dismissal should have been without prejudice.[19] However, the court stated that post-trial discovery of applicable law that was not perceived or raised at trial does not provide grounds for relief under Rule 60(b).[20] The court held that Jackson's motion to vacate on the grounds that the superior court mistakenly ordered the judgment with prejudice should not have been granted.[21]

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10. *See id.*

11. *See id.* at 503-04.

12. *See id.* at 504.

13. *See id.* at 505; Super. Ct. R. Civ. P. 60(b).

14. *Jackson,* 734 A.2d at 505 (quoting Super. Ct. R. Civ. P. 60(b)(6)).

15. *Id.* (quoting Bendix Corp. v. Norberg, 404 A.2d 505, 506 (R.I. 1979)).

16. *See id.* (citing *Bendix Corp.*, 404 A.2d at 506 (quoting 1 Kent, Rhode Island Practice: Rules of Civil Procedure with Commentaries § 60.08 at 456 (1969))).

17. *See id.*

18. *See id.*

19. *See id. See also* Super. Ct. R. Civ. P. 4(*l*) (stating that if a defendant is not served within 120 days after the complaint is filed, the action shall be dismissed without prejudice).

20. *See Jackson,* 734 A.2d at 505 (citing *Bendix Corp.*, 404 A.2d at 507).

21. *See id.*

The motion justice ruled that he was vacating the original judgment pursuant to Rule 60(b)(4), which provides that a judgment that is void can be vacated.[22] He believed that he had erred in ordering the dismissal with prejudice because Rule 4(*l*) applied.[23] The motion justice reasoned that since Rule 4(*l*) specified that the dismissal should be without prejudice, his contrary order must be void.[24] Siemans argued that the order was not void, and the supreme court agreed, noting that a judgment is not void merely by virtue of being erroneous.[25]

The defendants also argued that the superior court properly dismissed Jackson's complaint with prejudice under Rule 41(b)(2) because Jackson's delay in serving of process was unreasonable and unjustified.[26] The supreme court disagreed with this contention, however, and concluded that Jackson was correct in her argument that Rule 4(*l*), dealing with untimely service of process, was controlling rather than Rule 41(b)(2), which deals generally with failure to comply with the Rules of Civil Procedure or with an order of the court, or lack of prosecution.[27] The supreme court concluded, therefore, that it was error for the motion justice to dismiss with prejudice under Rule 41(b)(2) rather than without prejudice under Rule 4(*l*).[28] However, the supreme court concluded that the proper remedy for this error would have been a motion to amend the judgments under Rule 52(b) or Rule 59(e) within ten days of the entry of the judgments, and Jackson's failure to do so did not make Rule 60(b) relief available to her.[29]

CONCLUSION

The Rhode Island Supreme Court determined that dismissal of a claim for untimely service of process is governed by Rule 4(*l*) of the Superior Court Rules of Civil Procedure rather than by the more general Rule 42(b)(2). The court concluded that a legal mis-

22. *See id.* at 506.
23. *See id.*
24. The justice stated, "It seems to me if the Rule says dismissed without prejudice, my Order was void. It doesn't make any sense." *Id.*
25. *See id.* (citing 11 Charles Alan Wright et al., Federal Practice and Procedure § 2862 (2d ed. 1995).
26. *See id.*
27. *See id.* at 506-07.
28. *See id.* at 507.
29. *See id.*

take does not render a judgment void, nor does it constitute grounds to vacate a judgment pursuant to Rule 60(b)(1) or Rule 60(b)(6). The proper means to obtain relief from a judgment based on a legal mistake is by appeal.

Jennifer K. Towle

Civil Procedure. *Millman v. Millman*, 732 A.2d 1118 (R.I. 1999). Pursuant to Rule 4(a) of the Supreme Court Rules of Appellate Procedure, a trial court may extend the time period in which a party may file an appeal for an additional thirty days beyond the intial twenty day period. Because the thirty day extension must begin to run at the expiration of the initial twenty day period, not from the date that the extension was granted, the court must grant the motion for an extension within fifty days of the judgment or decree which is the subject of the appeal, and the appellant must file the notice of appeal within the same fifty day period.

FACTS AND TRAVEL

The plaintiff, Carole A. Millman (Carole), and defendant, Harvey Millman (Harvey), were married on September 30, 1956.[1] Carole filed for divorce on June 29, 1994.[2] The family court rendered a final decision in the Millman's divorce proceeding on May 9, 1997.[3] At or around this time, Harvey's attorney was suffering from an illness.[4] Therefore, on June 1, 1997, Harvey's attorney filed a motion to extend the time to appeal the proper division of marital assets.[5] A hearing on the motion occurred on June 30, 1997, and on July 2, 1997, the family court entered an order granting Harvey until August 1, 1997, to file his notice of appeal.[6] On July 22, 1997, Carole filed a notice of appeal from the family court's order granting Harvey an extension of time.[7] Harvey filed his appeal of the proper division of marital assets on July 29, 1997.[8]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court denied Harvey's appeal after concluding that it was filed more than fifty days after the final decision was rendered.[9] Rule 4(a) of the Supreme Court Rules of Appellate Procedure provides that an appeal "shall be filed with the clerk of the trial court within twenty (20) days of *the date of*

1. *See* Millman v. Millman, 723 A.2d 1118, 1119 (R.I. 1999).
2. *See id.*
3. *See id.*
4. *See id.*
5. *See id.*
6. *See id.*
7. *See id.*
8. *See id.*
9. *See id.*

entry of the judgment, order or decree appealed from . . ."[10] and allows for a thirty day extension of time to appeal, upon a showing of neglect, before or after the twenty day period has expired.[11] The court has previously ruled that the time specified in Rule 4(a) is mandatory.[12] Furthermore, the court has also held that the thirty day extension "begins running at the expiration of the original twenty-day period, and *not* from the date the motion to extend is granted."[13] Therefore, an appeal cannot be filed more than fifty days after the judgment is rendered.

In *Millman,* the final decision was executed on May 9, 1997. As a result, an extension could only be granted to a date of June 30, 1997, fifty days after the date of entry of final judgment.[14] However, the trial court entered the order granting the extension on July 2, 1997, and Harvey filed his notice of appeal on July 29, 1997.[15] Neither the court's order nor Harvey's appeal fell within the fifty day period following the entry of judgment.[16] Therefore, the court concluded that Harvey's notice of appeal was untimely and vacated the trial court's order extending the time to appeal.[17]

CONCLUSION

The time specified in Rule 4(a) of the Supreme Court Rules of Appellate Procedure is mandatory. The trial court may not grant an extension of time in which to file an appeal more than fifty days after the final judgment, decree, or order is entered. In the event that an extension is granted, the appellant may not file notice of appeal beyond the same fifty day period.

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10. R.I. Sup. Ct. R. App. P. 4(a) (emphasis added).
11. *See id.*
12. *See Millman*, 723 A.2d at 1119 (citing Warwick Land Trust, Inc. v. Children's Friend and Serv., Inc., 604 A.2d 1266, 1267 (R.I. 1992)).
13. *Id.* (citing Mitchell v. Mitchell, 522 A.2d 219, 220 (R.I. 1987)).
14. *See id.*
15. *See id.*
16. *See id.*
17. *See id.*

Civil Procedure. *State v. Presler*, 731 A.2d 699 (R.I. 1999). In a prosecution for driving under the influence, death resulting and driving as to endanger, death resulting, the Rhode Island Supreme Court determined that res judicata principles, not law-of-the-case doctrine, applied to the court's prior ruling on an interlocutory appeal concerning the defendant's motion to suppress.

FACTS AND TRAVEL

In *State v. Presler*,[1] the defendant was charged with driving under the influence, death resulting[2] and driving so as to endanger, death resulting,[3] as a result of a motor vehicle accident that occurred on March 13, 1994.[4] On the date of the accident, a Rhode Island state police trooper observed the defendant traveling northbound in the southbound lane of Interstate Route 95.[5] The trooper attempted unsuccessfully to gain the attention of defendant.[6] Defendant then drove onto an exit ramp and headed eastbound on Route 195 West.[7] It is on that stretch of highway that defendant collided with another vehicle driven by Joseph Abilheira, who died because of his injuries from the accident.[8] The defendant, unconscious after the accident, was taken to Rhode Island Hospital.[9]

While being treated for his injuries at the hospital, the emergency room nurse noticed the distinct smell of alcohol on defendant.[10] At that point, the hospital staff took a blood sample from defendant to aid in his diagnosis and to determine if there was alcohol present in his bloodstream.[11] While at the hospital, defendant was also under the supervision of a state police trooper, who responded to the scene of the accident and remained with defendant during his time at the hospital.[12] The trooper questioned the emergency room nurse about defendant's condition but was not

1. 731 A.2d 699 (R.I. 1999).
2. R.I. Gen. Laws § 31-27-2.2 (1956) (1994 Reenactment).
3. R.I. Gen. Laws § 31-27-1(a) (1956) (1994 Reenactment).
4. *See Presler*, 731 A.2d at 700.
5. *See id.*
6. *See id.*
7. *See id.* at 701.
8. *See id.*
9. *See id.*
10. *See id.*
11. *See id.*
12. *See id.*

present when the blood sample was taken from defendant.[13] The blood tests disclosed defendant had a blood-alcohol level of 0.198.[14] Defendant was subsequently indicted on the two charges.[15]

Before trial began, defendant filed a motion to suppress the results of the blood alcohol tests taken at the hospital.[16] Defendant's motion was granted by a superior court judge.[17] The state subsequently filed an interlocutory appeal with the Rhode Island Supreme Court, and an order was entered on May 16, 1996 upholding the appropriateness of the hospital's blood tests and the admissibility of the blood-alcohol tests.[18] The case was then remanded for trial.[19]

On remand, defendant filed a second motion to suppress the admissibility of the blood-alcohol tests.[20] Defendant's reasons for bringing the second motion were identical to his initial motion to suppress, but with the additional claim that his blood tests were administered by an order of the state police.[21] Defendant's second motion to suppress was denied by a different superior court justice, with a finding that defendant's blood was taken at the direction of hospital staff and not by the state police.[22]

At trial, defendant testified that he never consumed alcohol and the party he attended on the night of the accident only served non-alcoholic beverages.[23] Defendant claimed he had no recollection of the evening except for alleging he had been attacked by four men.[24] As a defense, defendant claimed that his drink was poisoned "which then turned him into a 'zombie' and caused him to lose his mind and . . . involuntarily consume alcohol."[25] Defendant was convicted on both counts of driving under the influence of liquor or drugs, death resulting and driving as to endanger, death

13. *See id.*
14. *See id.*
15. *See id.*
16. *See id.*
17. *See id.*
18. *See id.*
19. *See id.*
20. *See id.*
21. *See id.*
22. *See id.*
23. *See id.*
24. *See id.*
25. *Id.* at 702.

resulting.[26] Subsequently, defendant filed an appeal claiming that the trial judge was incorrect in denying his second motion to suppress the hospital blood tests.[27]

BACKGROUND

Res judicata, also known as claim preclusion, applies to any valid judgment that is final and decided on the merits.[28] Issue preclusion, or collateral estoppel, compels the court to make the same finding of fact on identical issues litigated in a previous suit involving the same litigants.[29] The law-of-the-case doctrine does not have the degree of finality that pertains to claim and issue preclusion.[30] The law-of-the-case doctrine dictates that "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case."[31] Moreover, the law-of-the-case doctrine does not completely bar reevaluation of a previous decision in instances where new evidence is produced that "significantly extends or expands the record."[32]

ANALYSIS AND HOLDING

The first issue on appeal was whether the denial of defendant's second motion to suppress the results of his blood-alcohol test was appropriate.[33] Defendant claims that blood samples taken from him at the hospital were taken in violation of section 31-27-2 of the Rhode Island General Laws.[34] The supreme court, however,

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26. *See id.*

27. *See id.* The defendant also argued on appeal that the State erroneously tried to refresh his recollection during cross-examination with the use of inadmissible hearsay. The supreme court held that the only requisite for using an item to refresh a witness' memory is that the witness must not remember a matter relevant to the litigation, and noted that the item used to refresh recollection need not be admissible in evidence. *See id.* at 704.

28. *See id.* at 705.

29. *See id.*

30. *See id.* at 703.

31. *Id.* at 705 (quoting Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 815-16 (1988)).

32. *Id.* at 703 (quoting Richardson v. Smith, 691 A.2d 543, 546 (R.I. 1997)).

33. *See id.* at 702.

34. *See id.* R.I. Gen. Laws § 31-27-2 states in pertinent part that "the test was performed according to methods and with equipment approved by the director of the department of health of the state of Rhode Island and by an authorized individual." R.I. Gen. Laws § 31-27-2 (1956) (1994 Reenactment).

held that the samples were not taken in violation of the statute and therefore were admissible at trial.[35]

The court also determined that the previous order filed on May 16, 1996 denying defendant's initial motion to suppress the blood tests precluded defendant from revisiting the issue a second time.[36] In so deciding, the court reached its decision using the principles of res judicata, not the law-of-the-case doctrine.[37] Since the law-of-the-case doctrine does not have the finality of res judicata and is seen as more a "nature of a rule of policy and convenience,"[38] the supreme court determined its May 16, 1996 ruling had the effect of issue preclusion.[39] The court stated that the "May 16, 1996 order finally and conclusively determined that the defendant's blood had not been taken in violation of section 31-27-2 and would be admissible at his trial."[40] That order effectively invoked the principle of res judicata to the question of admissibility to defendant's blood test results.[41]

The Rhode Island Supreme Court continued its discussion of the law-of-the-case doctrine by distinguishing *Richardson v. Smith*[42] from the present case. The *Richardson* court articulated that under the law-of-the-case doctrine, once a judge has decided an interlocutory issue in a suit, a second judge on that same court should not disturb the initial ruling on that matter if it is presented at a later time in the suit.[43] However, the court stated that this case differs from *Richardson* because the interlocutory matter was ruled upon by the Rhode Island Supreme Court as a final determination and remanded back to the trial court for trial, and was not decided on by another judge sitting on the same court.[44]

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35. *See Presler*, 731 A.2d at 702.

36. *See id.*

37. *See id.*

38. *Id.* at 703 (quoting Salvadore v. Major Elec. & Supply, Inc., 469 A.2d 353, 356 (R.I. 1983)).

39. *See id.* at 702.

40. *Id.*

41. *See id.*

42. 691 A.2d 543 (R.I. 1997). *Richardson* is heavily relied upon by Justice Flanders in his concurring opinion. He points out that the law-of-the-case doctrine "will not bar reconsideration of an earlier order when evidence has been introduced in the interim that significantly extends or expands the record." *Id.* at 546.

43. *See id.*

44. *See Presler*, 731 A.2d at 702-03.

The court also indicated that the goal of finality caused the court to apply the principles of res judicata instead of the law-of-the-case doctrine.[45] The court recognized that if defendant's second motion to suppress contained new charges and new evidence, it "might well have actually served to rescue his motion from the non-final aspect of the law-of-the-case doctrine and permitted its reconsideration by the second Superior Court trial justice."[46] Nonetheless, that situation did not exist in the present case.[47] Defendant provided no new evidence that would modify his initial motion to suppress and therefore, the issue could not be readdressed under the application of res judicata principles.[48]

Concurring Opinion

Justice Flanders, while agreeing with the court's overall conclusion, disagreed with the manner in which the court made its decision to affirm denial of defendant's second motion to suppress.[49] Rather than using the principles of res judicata, Justice Flanders determined that the issue of defendant's second motion to suppress could be resolved by using the law-of-the-case doctrine.[50] Justice Flanders noted that since the decision regarding the motion to suppress was interlocutory in nature, the law-of-the-case doctrine, not res judicata, prevented the issue from being revisited.[51]

CONCLUSION

In *State v. Presler*, the Rhode Island Supreme Court held that the principles of res judicata and not the law-of-the-case doctrine applied to interlocutory matters decided on an appellate level. The court pointed to the finality aspect of res judicata as the reason for its decision, but maintained that the law-of-the-case doctrine was still good law when applied to identical interlocutory matters previously addressed and ruled on by a judge of the same court. Thus, the supreme court clarified whether the doctrine of res judicata or

45. *See id.* at 703.
46. *Id.*
47. *See id.*
48. *See id.*
49. *See id.* at 705.
50. *See id.*
51. *See id.*

the law-of-the-case should be applied by a court when the court is confronted with a previously decided issue.

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