

IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

AMBER QUITNO, Plaintiff-Appellant,

v.

TODD GILSON and MELISA GILSON, Defendants-Appellees.

Appeal from the Circuit Court of De Kalb County.
Honorable Bradley J. Waller, Judge, Presiding.
No. 24-LA-18

JUSTICE SCHOSTOK delivered the judgment of the court, with opinion.
Justices Birkett and Mullen concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff, and *pro se* appellant, Amber Quitno, filed an amended complaint against defendants, Todd Gilson and Melisa Gilson, alleging libel, defamation, and invasion of privacy. Defendants filed a motion to dismiss, arguing that the doctrine of *res judicata* barred the amended complaint because plaintiff had previously filed a petition for an order of protection based on the same operative facts, which had been dismissed. The circuit court of De Kalb County granted defendants' motion to dismiss the amended complaint, and plaintiff appealed. Because we find that the civil complaint did not present the same cause of action as the petition for an order of protection, we reverse and remand.

¶ 2

I. BACKGROUND

¶ 3 On April 20, 2023, plaintiff filed, in case No. 23-OP-152, a *pro se* petition for an emergency stalking no-contact order (SNCO) against defendants, her next-door neighbors. She brought her petition under the Stalking No Contact Order Act (Stalking Act) (740 ILCS 21/1 *et seq.* (West 2022)). That same day, the trial court denied the petition without prejudice. On July 3, 2023, plaintiff filed, by counsel, an amended petition for an SNCO against defendants. The amended petition was organized into three counts entitled, respectively, (1) “Electronic Harassment Allegations”; (2) “Harassment and Indirect, Unwanted Contact by Making False Reports through Law Enforcement and Other Government Agencies that Don’t Relate to Public Duties”; and (3) “Intrusive, Unwanted Contact with the Petitioner’s Child and Family Regarding Sexual Orientation, Religion, and Music.” The petition alleged, *inter alia*, that defendants (1) eavesdropped on plaintiff while she was in her backyard and recorded her private conversations, (2) publicly shared transcripts of those recorded conversations, (3) made false reports to the police that plaintiff’s music was a public disturbance, and (4) verbally harassed plaintiff’s children.

¶ 4 On July 17, 2023, defendants filed a motion to strike and dismiss the amended petition under section 2-619.1 of the Code of Civil Procedure (735 ILCS 5/2-619.1 (West 2022)). In addition to dismissal, the motion sought an award of attorney fees under the Citizen Participation Act (735 ILCS 110/25 (West 2022)). On December 19, 2023, the trial court issued a written order granting the motion to dismiss based on defendants’ argument that the petition failed to meet formal pleading requirements, specifically, (1) the amended petition did not utilize the form required by local rule and (2) the petition was brought against two defendants, but an SNCO could be sought only against a singular individual. On December 26, 2023, plaintiff filed a motion to

reconsider, challenging the grounds on which the court dismissed the petition. At a hearing on February 20, 2024, the court denied the motion to reconsider. The court’s written order stated that defendants’ request for fees under the Citizen Participation Act was “entered and continued generally.” On March 11, 2024, plaintiff filed a notice of appeal from the orders of December 19, 2023, and February 20, 2024. We docketed the matter as appeal No. 2-24-0187.

¶ 5 In a summary order filed November 1, 2024, this court dismissed plaintiff’s appeal of case No. 23-OP-152 as premature because the request for fees was still pending. *Quitno v. Gilson*, No. 2-24-0187, ¶¶ 10-11 (2024) (unpublished summary order under Illinois Supreme Court Rule 23(c)). We explained that, depending on circumstances in the trial court, plaintiff could either (1) move to reestablish our jurisdiction over appeal No. 2-24-0187 or (2) file a new appeal. *Id.* ¶¶ 11-14.

¶ 6 In the meantime, on April 19, 2024—just more than a month after plaintiff filed appeal No. 2-24-0187—plaintiff initiated case No. 24-LA-18 by filing a complaint against defendants. On October 15, 2024, she filed a three-count amended complaint, alleging defamation (count I), libel (count II), and invasion of privacy (count III). Count III was subdivided into “Intrusion into Seclusion,” “False Light,” and “Public Disclosure of Private Facts.” The amended complaint restated many of the allegations of plaintiff’s petition for an SNCO. She requested damages.

¶ 7 On April 24, 2025, defendants filed a motion to dismiss the complaint as barred by a prior judgment, per section 2-619(a)(4) of the Code of Civil Procedure. See 735 ILCS 5/2-619(a)(4) (West 2022). The trial court held a hearing on the motion on June 17, 2025, where plaintiff appeared *pro se*. At the hearing, defense counsel argued that the doctrine of *res judicata* barred the civil complaint “because the action involve[d] the same parties and the same facts” as the petition for an SNCO, which had been dismissed with prejudice in case No. 23-OP-152. In response,

plaintiff acknowledged that her complaint did “have the same operative facts [as the petition for an SNCO]. Everything dealing with this case between myself and the [defendants] will always have the same operative facts because they are the truth and they’re going to be the same on every document.” However, plaintiff argued that, despite the factual commonality, the causes of action were distinct such that *res judicata* did not apply:

“So the stalking no-contact petition and order [*sic*] was a request for injunctive relief, protection from future contact. It was not about compensation for reputational damage, emotional distress or privacy violations. My claims [of] defamation, invasion of privacy, false light, et cetera, are civil tort claims with different elements and different remedies.

* * *

740 ILCS 21/80 specifically says that monetary damages are not available in a stalking no-contact proceeding, so civil tort claims are the only path to compensation.

In his motion I believe [defense counsel] referenced that I should have pursued civil tort claims in my stalking no-contact petition. That remedy isn’t available within that path. It doesn’t exist. I can’t attach a civil tort to a stalking no-contact claim. ***.”

¶ 8 The trial court granted the motion to dismiss and gave its rationale. Of particular relevance here, the court stated:

“Here fundamentally the basis of this motion is grounded in the doctrine of *res judicata*, and the argument essentially is that *res judicata* applies here because of the allegations that were asserted in the 23 OP 152, and [plaintiff] concedes that.

I mean, all of the operative facts, whether it’s in 23 OP 152, whether it’s in this matter, whether it would be in another matter—and I use this term loosely—the relationship

between the parties revolves around the allegations that are set forth in the current complaint and in the 23 OP 152 complaint.

So we have the same parties. We have the same identity or the same causes of action. ***.”

¶ 9 On July 1, 2025, plaintiff filed a motion to reconsider. On September 15, 2025, the trial court held a hearing on the motion, where plaintiff again appeared *pro se*. Defense counsel reaffirmed that the action should be barred by the dismissal in case No. 23-OP-152, in part because of a statement made by plaintiff at the hearing on the motion to dismiss:

“You have [plaintiff’s] own admission at the hearing on the motion to dismiss, *** ‘It does have the same operative facts. Everything dealing with this case between myself and [defendants] will always have the same operative facts.’

So I don’t—there’s not even an argument in my mind that can be made that *res judicata* doesn’t apply to this judgment, and so we’d ask the [c]ourt to deny the motion to reconsider and leave standing the motion—or the order of dismissal.”

¶ 10 In reply, plaintiff argued:

“After researching appellate decisions and details, I humbly acknowledge that I had misinterpreted really operative—operative facts, the transactional test, because, Your Honor, the transactional test requires more than just the same parties and some overlapping events. It requires a convenient trial unit.

It requires—so in my stalking no-contact petition[,] that statute prohibits monetary damages. The civil case seeks monetary damages, and importantly in this case I have the burden of proving actual malice. That is not true in the stalking no-contact order, Your

Honor—or petition, sorry. And they cannot form a convenient trial unit according to all of the cases and appellate decisions that I read.”

¶ 11 Before denying the motion to reconsider, the trial court explained, in relevant part:

“[Plaintiff] disagrees with the [c]ourt’s ruling that this case, 24 LA 18, was based upon the same transaction or occurrence and factual allegations as 23 OP 152. A reading of the pleadings, it is replete with the exact allegations but for the issue of any sort of monetary damages, but the factual allegations are identical. They can’t be anything but identical. They arise from the same occurrence or occurrences, as the case may be.

This [c]ourt did not misapply the law. [Plaintiff] doesn’t agree with the [c]ourt’s decision, and I don’t blame her. I tell litigants that all the time. I’m not asking you to agree with it, but there has to be a basis for a motion to reconsider, and the pleadings that [plaintiff’s] prior attorney filed both in the OP matter as well as the allegations here are identical. It couldn’t be anything but arising out of the same transaction or, more to the point, the occurrence.

The [c]ourt did analyze this element under the same evidence test and the transactional test. Under either one or both the facts are the same in both cases and, therefore, that element is satisfied.”

¶ 12 This timely appeal followed.

¶ 13 II. ANALYSIS

¶ 14 On appeal, plaintiff raises four arguments to support her contention that the trial court erred when it dismissed her complaint as barred by a prior judgment. In response, defendants argue that the trial court correctly applied the doctrine of *res judicata* in granting their motion to dismiss. Plaintiff first argues that the doctrine of *res judicata* does not apply because her petition for an

SNCO and her civil complaint were not based on the same cause of action. Because we agree with her first argument, and thus have adequate grounds for reversal, we decline to consider her remaining arguments.

¶ 15 A trial court may dismiss a cause of action where a prior judgment bars it. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001); 735 ILCS 5/2-619(a)(4) (West 2022). Under the doctrine of *res judicata*, a cause of action is barred if “(1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privies.” *Nowak*, 197 Ill. 2d at 390. The doctrine of *res judicata* “bars not only all claims actually resolved in the former suit, but also any claims that could have been raised.” *Kasny v. Coonen & Roth, Ltd.*, 395 Ill. App. 3d 870, 873 (2009). “The burden of showing that *res judicata* applies is on the party invoking the doctrine.” *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41. “Whether *res judicata* bars a claim presents a question of law subject to *de novo* review.” *Sciarrone v. Village of Island Lake*, 2025 IL App (2d) 240153, ¶ 55.

¶ 16 Plaintiff argues that the SNCO proceeding and the later civil action represent two different causes of action. In response, defendants argue that, in the trial court, they “unequivocally established that [p]laintiff relied on the same factual allegations to present different causes of action, resulting in the same evidence being required to prove the same facts essential to maintain the action and the same operative facts being relied upon to claim different forms of relief.”

¶ 17 In reply, plaintiff does not deny that the two actions were based on the same operative facts; instead, she argues that “factual overlap is not the end of the transactional analysis” and that the transactional test requires that all claims based on the same operative facts form a convenient trial unit. She further argues that the trial court erred when it failed to “address whether the tort claims could and should have been brought in the earlier SNCO proceeding.”

¶ 18 In determining whether an identity of cause of action exists between two cases, Illinois courts employ the transactional test. *Turczak v. First American Bank*, 2013 IL App (1st) 121964, ¶ 24. Under the transactional test, “separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief.” *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 311 (1998). “[T]he assertion of different theories or kinds of relief still constitutes a single cause of action if a single group of operative facts gives rise to the assertion of relief.” *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 50. “Under the transactional test, a valid final judgment bars further action by the plaintiff regarding any part of a transaction or series of connected transactions from which the claim arose.” *Altair Corp. v. Grand Premier Trust & Investment, Inc.*, 318 Ill. App. 3d 57, 61 (2000).

¶ 19 However, as plaintiff notes, factual overlap does not conclusively determine whether causes of action are identical. Courts must employ the transactional test “pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties’ expectations or business understanding or usage.” (Internal quotation marks omitted.) *Bank of New York Mellon v. Dubrovay*, 2021 IL App (2d) 190540, ¶ 23. The causes of action must be compared in terms of nature, purpose, scope, and available remedies. See, e.g., *River Park, Inc.*, 184 Ill. 2d at 313-17; *Dowrick v. Village of Downers Grove*, 362 Ill. App. 3d 512, 516-17 (2005); *In re Marriage of Jackson*, 315 Ill. App. 3d 741, 743 (2000); *Weisman v. Schiller, Ducanto & Fleck*, 314 Ill. App. 3d 577, 579-81 (2000). For the reasons explained below, we hold that plaintiff’s petition for an SNCO and her civil tort claims for damages did not present identical causes of action, despite their common factual allegations.

¶ 20 The Stalking Act (740 ILCS 21/1 *et seq.* (West 2022)) is one of four Illinois statutes that provide for the issuance of a protective order. See Ill. S. Ct. R. 102.1(a) (eff. Apr. 20, 2023) (defining a “protective order case” as “a proceeding arising under the Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.*), Code of Criminal Procedure (725 ILCS 5/112a-1.5 to 112a-31), Civil No Contact Order Act (740 ILCS 22/101 to 302), or [the Stalking Act] (740 ILCS 21/1 to 135)”). As our supreme court has explained, these various statutes share a common objective:

“The Illinois General Assembly has enacted several statutes allowing for protective orders to be issued on behalf of victims of domestic violence and sexual assault. See, *e.g.*, [the Stalking Act] (740 ILCS 21/1 *et seq.* (West 2018)); Illinois Domestic Violence Act of 1986 (750 ILCS 60/101 *et seq.* (West 2018)); Civil No Contact Order Act (740 ILCS 22/101 *et seq.* (West 2018)); 725 ILCS 5/112A-11.5 (West 2018).

Although the statutes may at times govern overlapping areas of coverage, or even present differing parties shouldering the burden of persuasion, the overarching legislative intent is clear. Through the enactment of a myriad of statutes, the General Assembly has sought to provide comprehensive protection to those affected by domestic violence, stalking, and sexual assault.

For example, the Illinois Domestic Violence Act of 1986 allows for the issuance of a civil order of protection for persons in a dangerous dating or familial relationship (see 750 ILCS 60/201(a) (West 2018)), while the Civil No Contact Order Act provides that protective orders are also available for victims of sexual assault yet does not require a dating relationship between the petitioner and [the] respondent (see 740 ILCS 22/213 (West 2018)). The Civil No Contact Order Act allows for a protective order based on a single unwarranted assault (see *id.* § 201(b)(1)), whereas the [Stalking Act] requires [the]

petitioner to establish that [the] respondent engaged in a course of conduct (see 740 ILCS 21/5 (West 2018)).” *People v. Deleon*, 2020 IL 124744, ¶¶ 47-49.

¶ 21 The Stalking Act’s objective is plain: “Stalking is a serious crime. *** All stalking victims should be able to seek a civil remedy requiring the offenders stay away from the victims and third parties.” 740 ILCS 21/5 (West 2022). The Stalking Act achieves its purpose by providing a focused and expedited process for obtaining an order of protection. The Stalking Act’s mechanics are similar to those of the Illinois Domestic Violence Act of 1986 (Domestic Violence Act) (750 ILCS 60/102(4), (6) (West 2022)), whose stated purposes include “[s]upport[ing] the efforts of victims of domestic violence to avoid further abuse by promptly entering and diligently enforcing court orders which prohibit abuse” and “[e]xpand[ing] the civil and criminal remedies for victims of domestic violence ***.” Section 210(a) of the Domestic Violence Act provides that “[a]ny action for an order of protection, whether commenced alone or in conjunction with another proceeding, is a distinct cause of action and requires that a separate summons be issued and served, ***.” (Emphasis added.) *Id.* § 210(a).

¶ 22 Although the Stalking Act does not contain the emphasized language, we believe that a petition for an SNCO should also be regarded as a “distinct cause of action” *vis-à-vis* civil claims such as plaintiff has brought. Various aspects of the Stalking Act establish this position. First, a petition for an SNCO may only be brought “(1) independently, by filing a petition for [an SNCO] in any civil court, unless specific courts are designated by local rule or order; or (2) in conjunction with a delinquency petition or a criminal prosecution as provided in Article 112A of the Code of Criminal Procedure of 1963.” 740 ILCS 21/20(a)(1)-(2) (West 2022). There is no provision for bringing the petition in conjunction with another civil action. Second, as with an action under the Domestic Violence Act, “[a]ny action for a[n] [SNCO under the Stalking Act] requires that a

separate summons be issued and served.” *Id.* § 60(a). Even when the petitioner is not seeking an emergency SNCO, the summons must be treated as a summons of an “emergency nature”:

“(a) *** The summons shall be in the form prescribed by Supreme Court Rule 101(d), except that it shall require the respondent to answer or appear within 7 days. Attachments to the summons or notice shall include the petition for stalking no contact order and supporting affidavits, if any, and any emergency stalking no contact order that has been issued.

(b) The summons shall be served by the sheriff or other law enforcement officer at the earliest time and shall take precedence over other summonses except those of a similar emergency nature ***.” *Id.* § 60(a)-(b).

¶ 23 Third, the Stalking Act twice states that its proceedings must be expedited. “A petition for [an SNCO] shall be treated as an expedited proceeding, and no court may transfer or otherwise decline to decide all or part of such petition.” *Id.* § 70(a). Again, “[a]ny action for [an SNCO] is an expedited proceeding” and “[c]ontinuances shall be granted only for good cause shown and kept to the minimum reasonable duration, taking into account the reasons for the continuance.” *Id.* § 75(b).

¶ 24 Thus, the requirements of the Stalking Act make it clear that even a petition for a nonemergency SNCO is to be expedited to achieve the goal of protecting victims from prospective harm. The legislature’s decision to expedite the proceedings explains why a petition under the Stalking Act may be brought in conjunction with a criminal prosecution but not a civil action, as the former tends to proceed more swiftly than the latter. Although, conceivably, a victim may bring a petition for an SNCO in parallel (if not in conjunction) with a civil action, the specter of preclusive effect might deter the victim from seeking an order of protection before all other

potential claims are developed and presented. Such deterrence would (1) undermine the Stalking Act's goal of providing an expeditious means of protection and (2) prevent the petition and separate civil action from forming a convenient trial unit. See *Dubrovay*, 2021 IL App (2d) 190540, ¶ 23.

¶ 25 There is further support in the Stalking Act for our holding that plaintiff's petition for an SNCO and her civil tort claims for damages were not identical causes of action. The Stalking Act's remedies are restricted to injunctive relief, with money damages being expressly prohibited. See 740 ILCS 21/80(b)(5), (d) (West 2022). The prohibition of money damages effectively limits the scope of the issues that may be considered in an action for an SNCO. Indeed, in the SNCO case here, as in the typical order of protection proceeding, the only substantive legal question was whether the abuse occurred and what steps should be taken to end the abuse. By contrast, the causes of action alleged in plaintiff's civil suit have far more diverse elements and thus require a broader inquiry, including into the type and amount of damages suffered.

¶ 26 Case law supports our holding that the scope of the SNCO proceeding was too narrow to find an identity of cause of action between that proceeding and plaintiff's civil action. In *Jackson*, the court held that an order of protection issued based on the respondent's abuse of the petitioner did not preclude consideration of the custody and visitation issues raised in the parties' later dissolution proceeding. *Jackson*, 315 Ill. App. 3d at 743. The court reasoned that the order of protection proceeding was concerned solely with whether the respondent had abused the petitioner and what actions should be taken to end the abuse. *Id.* In the dissolution proceeding, by contrast, the abuse would not be the sole factor in deciding custody and visitation. *Id.*

¶ 27 In *Vance v. Chandler*, 231 Ill. App. 3d 747, 749, 753 (1992), the court held that a prior dissolution judgment did not preclude the former wife's claims of civil conspiracy and intentional

infliction of emotional distress against the former husband because the Illinois Marriage and Dissolution of Marriage Act (Marriage Act) (Ill. Rev. Stat. 1989, ch. 40, ¶ 101 *et seq.*) did not authorize the dissolution court to determine those claims.

¶ 28 In *Weisman*, the court held that the adjudication of an attorney's fee petition against his client in a dissolution action did not preclude the client's later malpractice claim that sought damages for the attorney's allegedly negligent representation of the client in the dissolution proceeding. *Weisman*, 314 Ill. App. 3d at 579-80. The court reasoned that section 508 of the Marriage Act (750 ILCS 5/508 (West 1996)), which governs fee petitions by counsel against the client, "did not provide an adequate forum to litigate [the client's] legal malpractice claim." *Weisman*, 314 Ill. App. 3d at 580. Specifically, the malpractice claim "could not have been presented as a counterclaim in the fee petition hearing"; rather, the client could have obtained only a reduction in the fees sought and not a full award of damages based on the alleged malpractice. *Id.*¹

¹We recognize that, in *Kasny*, 395 Ill. App. 3d at 874, we found it settled in the Second District that "an attorney's claim for fees and a client's claim for malpractice are a single cause of action," "such that ordinarily a counterclaim is mandatory." In *Kasny*, the prior judgment was in a small claims action where the attorney claimed, and was awarded, unpaid fees. *Id.* at 871. The client later sued for legal malpractice. *Id.* at 871-72. Our analysis of whether the small claims judgment precluded the legal malpractice action assumed that the client would have been permitted to counterclaim for legal malpractice in the small claims action. *Id.* at 872-76. In *Weisman*, by contrast, the court expressly noted that the client could not have counterclaimed for legal malpractice in the section 508 fee proceeding but was limited there to seeking an offset of claimed fees rather than an award of damages. *Weisman*, 314 Ill. App. 3d at 580. *Weisman*, not *Kasny*, governs here because the Stalking Act barred plaintiff from seeking damages.

¶ 29 Finally, in *Miller v. Daley*, 131 Ill. App. 3d 959, 960-61 (1985), the court held that a forcible entry and detainer judgment granting possession to the owner did not preclude the residential tenant's later suit for damages stemming from the owner's locking the only available restroom on the premises during the pendency of the action. The court reasoned that "[t]he distinct purpose of the forcible entry and detainer proceeding is to determine only who should be in rightful possession" and that the tenant's grievance was not germane to that question. *Id.* at 961.

¶ 30 Under the principles applied in these cases, the narrow focus of an action under the Stalking Act supports treating plaintiff's petition for an SNCO as a separate cause of action from her civil tort claims seeking damages.

¶ 31 Also buttressing our conclusion is section 40 of the Stalking Act (740 ILCS 21/40 (West 2022)), which states, "There shall be no right to trial by jury in any proceeding to obtain, modify, vacate or extend any [SNCO] under this Act. However, nothing in this Section shall deny any existing right to trial by jury in a criminal proceeding." Here, because a jury trial is unavailable in a proceeding for an SNCO, we could not apply *res judicata* without infringing plaintiff's right to a jury trial for her common-law claims. See *Weisman*, 314 Ill. App. 3d at 580 (adjudication of fee petition brought by counsel against client in dissolution proceeding was not preclusive of client's later malpractice claim against counsel; even if the malpractice claim could have been litigated in the dissolution proceeding, the Marriage Act would have permitted the client only a bench trial for her claim, which, having existed at common law, was covered by the constitutional right to a jury).

¶ 32 We hold that the Stalking Act reflects a legislative intent to provide a mechanism to quickly provide injunctive relief in an action separate and distinct from any related civil claims that might exist between the parties. To hold that a petition for an SNCO bars any subsequent action arising from the same operative facts would have the effect of either (1) deterring victims from seeking

an order of protection without delay or (2) preventing victims from pursuing a civil complaint based on past harm. These outcomes would undermine the express purposes of the Stalking Act. In addition, the urgency inherent in a petition for an SNCO suggests that the action would not form a convenient trial unit with another type of civil claim. Therefore, because there is no identity of cause of action between plaintiff's petition for an SNCO and her civil tort claims for damages, *res judicata* is inapplicable.

¶ 33

III. CONCLUSION

¶ 34 For the reasons stated, we reverse the judgment of the circuit court of De Kalb County and remand for further proceedings.

¶ 35 Reversed and remanded.

Quitno v. Gilson, 2026 IL App (2d) 250447

Decision Under Review: Appeal from the Circuit Court of De Kalb County, No. 24-LA-18; the Hon. Bradley J. Waller, Judge, presiding.

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