

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2008

DENISE AYALA,

Appellant,

v.

Case No. 5D07-787

WILLIAM A. GONZALEZ,

Appellee.

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Opinion filed January 25, 2008

Appeal from the Circuit Court  
for Orange County,  
Donald Grincewicz, Judge.

Rudolph C. Campbell, Tampa, for  
Appellant.

Dorothy J. McMichen, of Dorothy J.  
McMichen, P.A., Orlando, for  
Appellee.

MONACO, J.

In this appeal the appellant, Denise Ayala, seeks review of an order that denied her relief on a pleading styled "Amended Complaint and Motion For Declaratory Relief Pursuant to Petition To Modify Mediation Agreement and To Determine Validity of Mediation Agreement." We might point out that this is the eleventh time this case involving the dissolution of the marriage between the parties has been before us. Ms. Ayala has filed ten of these appeals -- all unsuccessful. More importantly, we have

considered the identical substantive issues raised in this appeal on a prior occasion, and at that time affirmed the ruling of the trial court.

The trial judge in the current iteration of this case related in his order that two previous circuit court judges have considered and denied the appellant's demands for substantially the same relief she once again seeks regarding the same issue. The trial court understandably refused to consider her request yet again, and *sua sponte* dismissed the case as being previously adjudicated and thus, *res judicata*. More specifically, the trial judge, Judge Grincewitz, wrote:

The Court finds that this same motion has been filed twice previously, and denied by Judge Whitehead, and then Judge White WITH PREJUDICE. It was then appealed, and the 5th DCA Affirmed. The motion for Declaratory Judgment is denied a 3rd time with prejudice. If the motion is refiled the Court will entertain sanctions against the attorney, Rudolph Campbell.

After a careful review of the record<sup>1</sup> we affirm. Judge Grincewitz did exactly the right thing. *Res judicata* operates as an adjudication on the merits, barring a subsequent action on the same claim when the previous action was on the merits. This is precisely the situation before us now. See *Houswerth v. Neimiec*, 603 So. 2d 88 (Fla. 5th DCA 1992). Every litigant is entitled to one bite at the apple. Two bites is unfair. Three bites is an abuse of the trial court, the opposing party and this court. Accordingly, we also grant the motion of the appellee, William A. Gonzalez, for appellate attorney's fees against the appellant, Denise Ayala, and her attorney, Rudolph C. Campbell, in accordance with section 57.105, Florida Statutes (2007). We remand this case to the

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<sup>1</sup> A trial court's ruling that relief is barred on the grounds of *res judicata* is reviewed *de novo*. See *Felder v. State, Dep't of Mgmt. Servs.*, 32 Fla. L. Weekly D2801 (Fla. 1st DCA Nov. 26, 2007).

Circuit Court for Orange County, Florida, pursuant to Fla. R. App. P. 9.400(b), to determine and assess reasonable attorney's fees for this appeal.

AFFIRMED and REMANDED with instructions to determine and assess reasonable appellate attorney's fees.

ORFINGER and TORPY, JJ., concur.