solely in front of a particular residence." The Eleventh Circuit therefore had no problem finding the Winter Park ordinance constitutional. In *Frisby* the government pursued the significant interest of "protecting the well-being, tranquility, and privacy of the home," narrowly-tailored the ordinance because it only limited protesting directed at a specific person, not the general public, and left open alternative channels of communication because the protestors could still go door-to-door disseminating their message or protest in other public places. The Winter Park ordinance had a nearly identical description and was upheld against constitutional challenge.

On the other hand, the Eleventh Circuit "harbored serious concerns" about the loitering provision. The issue here for the court was that the ordinance permitted private citizens to simply place a 'no loitering' sign on their property, at which point City officers – the machine of the state – would prevent others from loitering, standing, sitting, or lying before the property in question. For the Circuit Court the ordinance did not just allow a private individual to control his/her own property, it allowed an individual to employ all the power of the state to prevent any speech s/he does not like from taking place at all in public fora (streets, rights-of-way, sidewalks, etc.). The provision was content-neutral, but the problem was in the amount of discretion it granted private citizens to silence others. Moreover, the court pointed out that there was no definition provided for the term "remain" in the ordinance, leaving the court to query "How long must one stay in the same place to violate [the ordinance]? Five minutes? One minute? Citizens are left to wonder." This provision failed constitutional scrutiny and the Eleventh Circuit reversed the district court's dismissal.

http://www.ca11.uscourts.gov/opinions/ops/201311499.pdf (last accessed Apr. 3, 2014).

Trial Practice: Where New Facts Arose After Initial Decision, Appeal Is Not Barred by Res Judicata

Webb v. Town of St. Joseph, No. 13-30667 (5th Cir. Mar. 31, 2014)

The appellant in a colorful case (a $58,200 fine for failure to remove a mobile home from city property for 582 days) recently obtained a reversal because enough new facts had emerged to avoid a finding of *res judicata*.

In 2006, Ivan Webb obtained the consent of the St. Joseph, Louisiana Board of Aldermen (Board) to place a single mobile home on his father's property in St. Joseph. He then sought permission to put more mobile homes on the tract, which request was denied by the Board. He proceeded to place another trailer on the property nevertheless. In 2007 the Mayor's Court of St. Joseph found that Webb had violated a Town ordinance which provided that "no building or other structure shall be built or constructed in the Town of St. Joseph without there being obtained a permit from the Mayor and Board authorizing or approving the construction of such building or other

structure." The court set the fine for violating the provision at $100 per day for so long as the trailer remained on the property.

Webb appealed to the Sixth Judicial Court of Louisiana, which upheld the $100 per day fine, and assessed Webb $58,200--$100 for each day from the time he had placed the unauthorized trailer on the property until trial. The Town proceeded to execute the judgment against Webb, seizing his Webb's entire salary as a member of the Board, from his election in October 2010 until October 2012. The Town also secured a writ of execution from the Sixth Judicial District Court, which authorized St. Joseph to seize and sell two lots in St. Joseph belonging to Webb.

In Webb moved to annul judgment and stay proceedings in the Sixth Judicial District Court of Louisiana. He alleged that the judgment was an absolute nullity because it exceeded the court's jurisdictional limits: the action originated in the Mayor's Court, which could issue no more than a $500 fine. The Sixth Judicial District Court denied the motion, but in March 2012, the Louisiana Second Circuit Court of Appeal reversed the district court, finding that the charging document gave notice of only one offense. Undaunted, the Town retained the proceeds from one of Webb's properties and kept Webb's salary through October 2012.

Webb sued the Town and its mayor under Section 1983, alleging violation of his Due Process rights and violation of the Thirteenth Amendment prohibition against involuntary servitude; he subsequently replaced the latter with claim of violation of his Eighth Amendment rights.

The defendants moved to dismiss, arguing that the prior Louisiana Second Circuit determination on the merits constituted *res judicata*.

The federal district court granted the defendants' motion to dismiss on the ground that Webb's claims were barred by the doctrine of *res judicata* or claim preclusion, determining that the Louisiana Second Circuit's ruling amending Webb's judgment satisfied all four prerequisites for the application of claim preclusion: (1) the parties in the prior action were identical; (2) the judgment was made by a court of competent jurisdiction; (3) the prior action concluded with a final judgment on the merits; and (4) the same claims or cause of action were involved.

Webb appealed.

HELD: The Fifth Circuit reversed and remanded. Webb's claims were not barred by claim preclusion.

DISCUSSION: The Court of Appeals focused on the fourth element of the claim preclusion matrix, which requires proof that the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation. It was not clear that the causes that Webb asserted in his latter lawsuit "existed" at the time of the state court's judgment in Webb's motion to annul.

Instead of conducting this analysis, the Circuit Court stated, the district court merely echoed the defendants' summary assertion that "the same claims that plaintiff asserted in the previous matter (that the fine was improper and/or illegal) are the same claims he asserts in this case." In fact, the district court had scant evidence before it.

For example, Webb alleged that the Town continued to enforce the illegal sentence, retained the proceeds that resulted from the sale of one of his properties seized by the Town pursuant to the writ of *fieri facias*, and withheld Webb's salary until October 2012. These grounds for recovery could not exist until the Second Circuit had already declared the judgment illegal.

http://www.ca5.uscourts.gov/opinions%5Cunpub%5C13/13-30667.0.pdf (last accessed Apr. 3, 2014).