

IN THE SUPREME COURT OF THE STATE OF DELAWARE

VINCENT BRANSON,	§	
	§	No. 574, 2012
	§	
Plaintiff Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware, in and for
v.	§	Sussex County
	§	
DAVID J. BRANSON, ALBERT	§	C.A. No. 12C-08-004
E. BRANSON, JR., and ROBERT	§	
BRANSON,	§	
	§	
Defendants Below,	§	
Appellees.	§	

Submitted: March 13, 2013

Decided: March 19, 2013

Before **HOLLAND**, **BERGER** and **JACOBS**, Justices.

ORDER

This 19th day of March 2013, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Vincent Branson, the plaintiff-below (“Vincent”), appeals from a Superior Court order dismissing his complaint with prejudice. On appeal, Vincent claims that the Superior Court erred by dismissing his “abuse of process” tort claim and awarding attorney’s fees to the Defendants. Because Vincent’s tort claim is an attempt to relitigate a prior Court of Chancery claim, we affirm.

2. This dispute arises out of an earlier Court of Chancery case, *In re Estate of Branson*.¹ In that case, Vincent sued his siblings, David Branson (“David”), Albert Branson (“Albert”), Robert Branson (“Robert”), and Theresa McVeary (“Theresa”) (collectively, the “Defendants”). The issue was which sibling(s) possessed title to their deceased mother’s Bethany Beach cottage. The Court of Chancery found, among other things, that Vincent did not possess any property interest in the cottage. After hearing oral argument, this Court affirmed without opinion.²

3. Vincent then filed, *pro se*, an “abuse of process” tort action in the Superior Court, claiming that the Defendants had engaged in “abusive and coercive conduct” prior to, and in the course of, the Court of Chancery litigation. The Defendants moved to dismiss Vincent’s complaint without citing any specific Superior Court Civil Rule (“Rule”) as the basis for dismissal. Vincent answered the Defendants’ motion, but did not appear at a hearing on the motion.

4. At that hearing, the Superior Court judge concluded that Vincent’s complaint was a frivolous attempt to relitigate the Court of Chancery’s *Branson* decision. By order dated September 21, 2012, the Superior Court dismissed

¹ 2010 WL 3449235 (Del. Ch. Sept. 1, 2010).

² *Branson v. Branson*, 35 A.3d 418, 2011 WL 6141029 (Del. Dec. 9, 2011) (TABLE).

Vincent's complaint with prejudice and ordered him to pay the Defendants' attorney's fees. This appeal followed.

5. The first issue presented is the standard of review. The parties dispute whether the Superior Court dismissed his complaint under Rule 12(b)(6) (for failure to state a claim) or Rule 41 (for failure to prosecute). Neither the Defendants' motion to dismiss nor the trial court order granting that motion was explicitly grounded upon a specific Civil Procedure Rule. The record shows, however, that the court implicitly held that Vincent had failed to state a claim, because his allegations could have been—but were not—raised in the Court of Chancery, and were therefore precluded as *res judicata*. A reasonable reading of the trial judge's ruling is that he dismissed the complaint under Rule 12(b)(6) for failure to state a claim upon which relief can be granted.

6. We review *de novo* an order dismissing a complaint under Rule 12(b)(6).³ Dismissal for failure to state a claim is appropriate only where it appears with reasonable certainty that the plaintiff could not prove any set of facts that would entitle him to relief.⁴ We review an attorney's fee award for abuse of discretion.⁵ Under the American Rule, each party normally pays his or her own

³ *Ramunno v. Cawley*, 705 A.2d 1029, 1034 (Del. 1998).

⁴ *Id.*

⁵ *Johnston v. Arbitrium (Cayman Islands) Handels AG*, 720 A.2d 542, 546 (Del. 1998).

attorney's fees.⁶ Bad faith conduct, however, is one exception to that general rule.⁷ Our courts have found bad faith where a party has knowingly asserted frivolous claims.⁸

7. On appeal, Vincent claims that the trial court erred because he could not have raised his "abuse of process" tort claim in the Court of Chancery litigation until that litigation was concluded, since he incurred no damages until after he lost the Chancery case. Vincent further argues that the award of attorney's fees was an abuse of discretion because his complaint was not frivolous. We disagree.

8. The allegations in Vincent's complaint all relate to the Defendants' conduct that occurred either before, or in the course of, the Chancery litigation. All of those claims could have been raised in the Chancery litigation, and there was no legal reason to await its conclusion. Although the Superior Court did not explicitly hold that Vincent's complaint was barred by *res judicata*, that holding is the only sensible way to construe its ruling. Because *res judicata* encompasses every claim that was actually raised, and also claims that could have been raised, in the prior litigation,⁹ the Superior Court properly applied that doctrine and

⁶ *Id.* at 545 & n.21.

⁷ *Id.* at 545-56 & nn.23-24.

⁸ *Id.* at 546 & nn.25-27.

⁹ *Mott v. State*, 49 A.3d 1186, 1190 (Del. 2012) (citation omitted).

dismissed Vincent's complaint under Rule 12(b)(6). The Superior Court also correctly found (for that reason) that Vincent's complaint was frivolous. Therefore, the court's fee-shifting attorney's fee award was not an abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice