

STATE OF MICHIGAN
COURT OF APPEALS

EDGARDO L. PEREZ-DELEON,

Plaintiff-Appellant,

v

DEPARTMENT OF SOCIAL SERVICES,

Defendant-Appellee.

UNPUBLISHED

July 24, 1998

Nos. 195892; 197040

Oakland Circuit Court

LC No. 96-515711 CP

Before: Holbrook, Jr., P.J., and Gribbs and R.J. Danhof*, JJ.

PER CURIAM.

In this consolidated appeal, plaintiff appeals as of right in Docket No. 195892 the order of the trial court granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(6) and MCR 2.116(C)(8). In Docket No. 197040, plaintiff appeals by leave granted the trial court's post-final order denying plaintiff's motions for substitution of defendant and for amendment of the summons. We affirm.

At one time, plaintiff worked as the business manager for his wife's medical practice. In 1993, plaintiff and his wife were convicted of Medicaid and health care fraud in Ingham County. At the criminal trial, James Groen of the Medical Service Administration of the Michigan Department of Social Services testified that he believed his department sent a "clarification" document in 1992 (hereinafter the "Groen document") to doctors and people who billed for doctors explaining that "you can't bill for an office examination unless there was an actual examination in the office between the doctor and the patient."

After his 1993 fraud conviction, plaintiff began to submit numerous Freedom of Information Act ("FOIA")¹ requests to defendant seeking the release of the Groen document. Unsatisfied with defendant's responses to these requests, plaintiff initiated three lawsuits against defendant, one in the Wayne County Circuit Court,² and two in the Oakland Circuit Court. This appeal stems from actions taken by the lower court with respect to one of the two Oakland County lawsuits.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

“This Court reviews . . . decisions on motions for summary disposition de novo to determine if the moving party was entitled to judgment as a matter of law.” *IBM v Dep’t of Treasury*, 220 Mich App 83, 86; 558 NW2d 456 (1996). MCR 2.116(C)(6) states that summary disposition is appropriate under the subrule if “[a]nother action has been initiated between the same parties involving the same claim.” The requirement that the two lawsuits involve “the same claim” does not mean that they must be identical. *JD Candler Roofing Co, Inc v Dickson*, 149 Mich App 593, 598; 386 NW2d 605 (1986). Rather, what is required is that “the two suits ‘must be based on the same or substantially the same cause of action.’” *Id.*, quoting *Ross v Onyx Oil & Gas Corp*, 128 Mich App 660, 666; 341 NW2d 783 (1983).

We hold that the trial court was correct in granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(6). Both Oakland County actions sought release of the requested Groen document and punitive damages for defendant’s alleged failure to comply with FOIA requests for the document. Plaintiff’s strained attempt to differentiate the two claims by manufacturing a cause of action under the Consumer Protection Act is of no consequence. *Candler, supra* at 601. “Resolution of either action will require examination of the same operative facts.” *Id.* Accordingly, the trial court did not err in considering these actions sufficiently related to justify summary dismissal pursuant to MCR 2.116(C)(6).³

Plaintiff also contends that the trial court should have granted his motion to amend the summons to reflect his contention that he did not file an identical action against defendant. Because plaintiff’s lawsuit was properly disposed of under MCR 2.116(C)(6), whether the trial court should have allowed amendment of the attendant summons is a moot issue that we decline to address.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Roman S. Gribbs

/s/ Robert J. Danhof

¹ MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.*

² The Wayne County lawsuit was dismissed with prejudice before the Oakland County lawsuits were filed. The Wayne County lawsuit is not a part of this appeal.

³ Given our conclusion that summary disposition pursuant to MCR 2.116(C)(6) was proper, we need not set forth an examination on whether MCR 2.116(C)(8) was also properly applied. We choose to note, however, that summary disposition pursuant to this subrule was justified.