

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD PREWITT and JUDIE PREWITT,

Plaintiffs-Appellants,

v

CITY OF ROCHESTER HILLS,

Defendant-Appellee.

UNPUBLISHED

August 21, 1998

No. 200404

Oakland Circuit Court

LC No. 96-525449-CZ

Before: O'Connell, P.J., and Gribbs and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting summary disposition pursuant to MCR 2.116(C)(7), in favor of defendant based upon the doctrines of collateral estoppel and res judicata. We affirm.

Plaintiffs' property was located in an area designated by defendant as an historic district; however, the property was in a dilapidated condition, and was in violation of several health code ordinances. After numerous unsuccessful attempts to restore the property and remedy the violations, plaintiffs sought a demolition permit from defendant. Plaintiffs argued their case in front of defendant's Historical District Commission and the State Historical Preservation Review Board, both of which denied plaintiffs the permit. The agencies found that the property served an important public purpose and had significant monumental value in the district. Thereafter, plaintiffs appealed the decision to circuit court; however, the case was dismissed without prejudice because of procedural deficiencies in the appeal. Plaintiffs then sought relief in the United States District Court for the Eastern District of Michigan. The federal district court determined that the matter was not ripe for judicial review, and that it did not have jurisdiction over the matter because plaintiffs were required to file an action in state court first. Accordingly, the federal district court dismissed the matter without prejudice, allowing plaintiffs to pursue the matter in the appropriate fashion. Instead of filing an appeal from the administrative decision, plaintiffs filed a new action in circuit court alleging the same facts and theories as contained in their original complaint. The circuit court dismissed the complaint on the basis of collateral estoppel and res judicata, finding that the issues had already been litigated and resolved in a prior administrative proceeding.

Plaintiffs now appeal the circuit court's dismissal of their complaint, arguing that there was never a final judgment on the merits, and therefore, res judicata and collateral estoppel are inapplicable. We disagree.

The preclusion doctrines serve an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims. *Nummer v Dep't of Treasury*, 448 Mich 534, 541; 533 NW2d 250 (1995). By putting an end to litigation, the preclusion doctrines eliminate costly repetition, conserve judicial resources, and ease fears of prolonged litigation. *Id.*

The doctrine of collateral estoppel bars a party from relitigating an issue in a subsequent cause of action *between the same parties* when the prior proceeding resulted in a final judgment, and where the issue was actually and necessarily determined in a prior proceeding. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). The related doctrine of res judicata operates to bar a subsequent action between the same parties when the facts or evidence essential to the action are identical to those already decided in a prior action. *Dart v Dart*, 224 Mich App 146; 568 NW2d 353 (1997). Although these doctrines are often used interchangeably, the primary distinction is that res judicata bars litigation in a second action not only of those claims actually litigated in a prior suit, as is the case for collateral estoppel, but also those claims arising out of the same transaction which the parties, exercising reasonable diligence, could have litigated but did not. *Martino v Cottman Transmissions Systems, Inc.*, 218 Mich App 54, 57-58; 554 NW2d 17 (1996).

Furthermore, when a litigant seeks to apply the preclusion doctrines to an administrative proceeding, the following additional factors must be satisfied: (1) the proceedings must have been adjudicatory in nature, (2) there must be a method of appeal, and (3) the Legislature must have intended that the administrative determination be a final decision in the absence of an appeal. *Nummer, supra* at 542; *Storey v Meijer, Inc.*, 431 Mich 368, 373; 429 NW2d 169 (1988).

We are persuaded that all of the foregoing elements are satisfied in this case, and the preclusion doctrines are applicable to the instant case. See generally *Nummer, supra* at 534. Therefore, the primary area of contention on appeal is whether there was a final ruling on the merits in the administrative proceeding, precluding plaintiffs from raising the same issues in a subsequent state action. Specifically, the issue before this Court is whether the State Historic Preservation Review Board's administrative decision to affirm the denial of a demolition permit constituted a final decision on the merits for purposes of the preclusion doctrines when plaintiffs failed to properly appeal the ruling to circuit court.

In the case at bar, plaintiffs' application for a demolition permit was initially considered by the State Historic Commission, which denied the request for a permit. The commission's decision was next considered by the State Historic Preservation Review Board pursuant to MCL 399.205(2); MSA 5.3407(5)(2), which upheld the commission's decision. According to the Local Historic District's Act, MCL 399.205(2); MSA 5.3407(5)(2), and the Administrative Procedures Act, MCL 24.304; MSA 3.560(204), plaintiffs then had 60 days from the issuance of the adverse decision to file an appeal in the circuit court. Although plaintiffs made an initial effort to appeal the decision, their case was dismissed

without prejudice because of procedural deficiencies in the appeal. Thereafter, instead of perfecting the appeal in a timely and orderly fashion, plaintiffs sought to relitigate the same facts and issues by filing a separate circuit court suit and renaming the cause of action as a taking in violation of the United States and Michigan Constitutions. This case was dismissed by the circuit court based on the doctrine of collateral estoppel.

We find that the preclusion doctrines bar plaintiffs from asserting the same claims in circuit court as they did in the administrative forum because their failure to properly appeal to circuit court rendered the administrative decision a final judgment on the merits with preclusive effects. We are convinced that plaintiffs had a full and fair opportunity to raise the issue of a takings violation before the State Historic Preservation Review Board, and had ample time to file an appeal to the circuit court, in accordance with the statute. Therefore, plaintiffs' failure to pursue the appropriate relief in circuit court rendered the decision of the administrative agency a final ruling, precluding a subsequent action on the same issues and claims. *Nummer, supra* at 534. See also *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379-380; 521 NW2d 531 (1994); *King v Michigan Consolidated Gas Co*, 177 Mich App 531, 535; 442 NW2d 714 (1989).

Alternatively, plaintiffs assert that the circuit court was bound by the decision of the federal district court which dismissed their takings claim without prejudice asserting that the action was not ripe in federal court because plaintiffs must first file an action in state court. Plaintiffs argue that because defendant failed to appeal the federal court's decision, res judicata and collateral estoppel are inapplicable to this action and do not bar them from pursuing their claim in state court. We disagree.

After plaintiffs' request for a demolition permit had been denied by the administrative agencies, plaintiffs filed an action in the federal district court alleging essentially the same claims and theories as asserted in the state claim. The federal district court concluded that the case was not ripe in federal court because plaintiffs did not obtain a ruling in state court. Accordingly, the federal district court dismissed plaintiffs' case without prejudice. Plaintiffs now assert that this ruling is binding on the parties and prevents defendant from claiming that there had been a final ruling on the merits in the administrative forum.

In light of our foregoing conclusion that the administrative decision denying plaintiffs' demolition permit became a final judgment on the merits when plaintiffs failed to timely appeal the decision, we are not persuaded by plaintiffs' alternative argument that the federal district court ruling precludes the application of collateral estoppel and res judicata to this action. While it is true that federal orders dismissing a matter without prejudice do not constitute determinations on the merits for purposes of res judicata, we have already determined that the decision of the State Historic Preservation Review Board became final and was afforded preclusive effect, prior to the filing of the federal action, and despite the federal district court's ruling and rationale. See *Sarin v Samaritan Health Center*, 176 Mich App 790, 798; 440 NW2d 80 (1989). For this reason, plaintiffs' argument is without merit.

In conclusion, we find that plaintiffs are not permitted to maintain present or future lawsuits which deal with the same factual issues already litigated by simply renaming the cause of action. Michigan courts have adopted a broad interpretation of the doctrine of res judicata that bars not only

claims actually litigated in the prior action, but every claim that arises out of the same transaction that could have been raised if the parties exercised reasonable diligence. *Dart, supra* at 156. Because plaintiffs failed to file a proper appeal in circuit court challenging the administrative decision, the ruling of the State Historic Preservation Review Board became a final decision on the merits, and the preclusion doctrines bar any subsequent relitigation of those issues or claims.

Affirmed.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Michael R. Smolenski