

STATE OF MICHIGAN
COURT OF APPEALS

KILINDI O. IYI,

Plaintiff-Appellant,

v

CITY OF WARREN, WARREN POLICE
OFFICERS MARK T. JAVERY, BADGE NO. 248,
OFFICER GARWOOD, OFFICER SCHULTZ,
OFFICER WILLIAMS, MACOMB COUNTY
SHERIFF'S DEPUTY HUTCHINS, and MACOMB
COUNTY,

Defendants-Appellees.

UNPUBLISHED
March 31, 2000

No. 210295
Macomb Circuit Court
LC No. 97-001623-NO

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court judgment granting defendants' motions for summary disposition pursuant to MCR 2.116(C)(7) on res judicata grounds, and ordering plaintiff's counsel to pay \$250.00 in attorney fees as a sanction for failing to appear for a hearing. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff brought two separate actions against the City of Warren, Macomb County and certain police officers and deputies, arising out of his allegations of mistreatment while in custody. The initial complaint named several John Doe defendants, and stated state law causes of action. While motions for summary disposition were pending, plaintiff filed this action based on the same conduct, but pleading claims under 42 USC 1983 based on violations of the federal Constitution. The pending motions for summary disposition were granted, and the second action was dismissed on res judicata grounds pursuant to MCR 2.116(C)(7).

The doctrine of res judicata bars relitigation of a claim where the same parties fully litigated a claim and a final judgment has resulted. Application of the doctrine requires that (1) the first action be decided on its merits, (2) the matter being litigated in the second case was or could have been resolved

in the first case, and (3) both actions involved the same parties or their privies. *Andrews v Donnelly (After Remand)*, 220 Mich App 206, 209; 559 NW2d 68 (1996).

Plaintiff has provided no authority to support his argument that the fact that the first action was still pending bars the application of res judicata. Where the first action was dismissed prior to the filing of an answer in the second action, there is no basis for finding that defendants waived mandatory joinder. The waiver provision in effect at the time did not affect collateral estoppel or the relitigation of a claim. MCR 2.203(A)(2).

Plaintiff argues that res judicata should not apply to the individual defendants because the John Doe defendants named in the first action were not parties to the suit. *Thomas v Process Equipment Corp*, 154 Mich App 78, 85; 397 NW2d 224 (1986). While the individual defendants were not named in the first action, the complaint was clearly based on their conduct, and the second action sought to relitigate the same claim based on the same facts. Under these circumstances, where the individuals are employees of the governmental entity involved in both suits, the individual defendants may assert collateral estoppel defensively to preclude a claim against them. *Arim v General Motors Corp*, 206 Mich App 178, 194; 520 NW2d 695 (1994).

Finally, plaintiff has failed to show that the trial court abused its discretion in imposing a sanction against plaintiff's counsel for failure to appear at a summary disposition hearing. *Maryland Casualty Co v Allen*, 221 Mich App 26; 561 NW2d 103 (1997).

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey