

STATE OF MICHIGAN  
COURT OF APPEALS

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MICHAEL CURTIS LYONS,

Plaintiff-Appellant,

v

JO WASHINGTON, MYRTLE TAYLOR,  
MARILYN KARIE, KARL TROY, and TOY  
LYNN SMITH,

Defendants-Appellees.

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UNPUBLISHED

August 18, 2000

No. 212516

Wayne Circuit Court

LC No. 97-738239-CZ

Before: White, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition in favor of defendants. We affirm.

Plaintiff brought this action against defendants alleging tortious conduct during the course of a probate court proceeding against plaintiff that resulted in the termination of his parental rights to his son. Plaintiff had previously filed a civil claim containing identical allegations against the Lula Belle Stewart Center for the conduct of its employees. That case resulted in the trial court's grant of summary disposition for defendants, based upon lack of jurisdiction and immunity. This Court affirmed, in an unpublished, per curiam opinion.<sup>1</sup> We find that the trial court properly granted summary disposition in the instant case based on principles of res judicata, immunity, and lack of jurisdiction.

The applicability of res judicata is a question of law that is reviewed de novo on appeal. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). A trial court's grant of summary disposition based on lack of jurisdiction, prior judgment, or immunity is also reviewed de novo. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 599-600; 609 NW2d

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<sup>1</sup> *Lyons v Green*, unpublished opinion per curiam of the Court of Appeals, issued June 18, 1999 (Docket No. 207147).

203 (2000); *Herbolsheimer v SMS Holding Co*, 239 Mich App 236, 240; 608 NW2d 487 (2000); *Steele v Dep't of Corrections*, 215 Mich App 710, 712; 546 NW2d 725 (1996).

The application of res judicata to bar a subsequent action requires: 1) the prior action must have been decided on its merits; (2) the matter contested in the second case was or could have been resolved in the first; and (3) both actions involved the same parties or their privies. *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 166-167; 600 NW2d 617 (1999). In the prior action, the trial court addressed the merits of plaintiff's claims and determined that his claims were barred on the basis of immunity. The trial court granted summary disposition in favor of the defendants, which this Court affirmed. Plaintiff's complaint in the instant case alleges identical instances of misconduct on the part of defendants during the course of the probate court proceedings against plaintiff. In the first case, plaintiff claimed that the Lula Belle Stewart Center, through its employees, engaged in tortious conduct in order to deprive plaintiff of his parental rights. In the instant case, plaintiff realleged the same instances of misconduct as in the prior case. The only distinction is that, in the instant case, plaintiff names as defendants individual employees of the Lula Belle Stewart Center, defendants Karie, Troy, and Smith, rather than the Lula Belle Stewart Center itself. Because the Lula Belle Stewart Center and its employees are in privity through agency principles, the parties are identical for purposes of res judicata. *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270 (1988). We therefore conclude that the trial court properly dismissed the case against Karie, Troy, and Smith on principles of res judicata.<sup>2</sup>

Furthermore, summary disposition was warranted as to all defendants in the instant case for the reasons set forth in this Court's opinion in the prior case. As this Court indicated, persons who report child abuse are immune from civil and criminal liability if the report is made in good faith. MCL 722.625; MSA 25.248(5); *Spikes v Banks*, 231 Mich App 341, 346-347; 586 NW2d 106 (1998); *Martin v Children's Aid Society*, 215 Mich App 88, 95; 544 NW2d 651 (1996). As this Court stated in the prior action:

Likewise, defendant Lulla [sic] Belle Stewart Center is immune from liability. See *Martin v Children's Aid Society*, 215 Mich App 88, 95; 544 NW2d 651 (1996) (social workers who initiate and monitor protection proceedings are immune from liability). Plaintiff's remedy does not lie in a civil action against the social worker. Instead, potential wrongful conduct by a social worker can be addressed through direct attack or appeal of the probate court's order. Accordingly, the trial court properly granted defendants' motion for summary disposition on the basis that defendants were immune from civil and criminal liability. MCR 2.116(C)(7). [*Lyons v Green*, unpublished opinion per curiam of the Court of Appeals, issued June 18, 1999 (Docket No. 207147).]

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<sup>2</sup> Defendants Washington and Taylor are employees of the Family Independence Agency. Therefore, they were not in privity with the defendant in the prior action, the Lula Belle Stewart Center, and plaintiff's claims against them are not barred by res judicata.

As in the prior action, plaintiff's claims against defendants in the instant case involve actions taken in the course of their duties as social workers in commencing the parental rights termination proceeding. Additionally, as this Court made clear in the prior case, the trial court lacked jurisdiction to consider alleged misconduct in conjunction with the probate court proceedings. Plaintiff's proper course of action was to challenge the probate court's decision. Accordingly, we conclude that the trial court properly granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(4) and (7).

Affirmed.

/s/ Helene N. White

/s/ Martin M. Doctoroff

/s/ Peter D. O'Connell