

STATE OF MICHIGAN
COURT OF APPEALS

DOROTHY SCOTT and FRANK STRAUB,

Plaintiffs-Appellants,

v

CITY OF TROY and TROY HISTORICAL
SOCIETY,

Defendants-Appellees.

UNPUBLISHED

June 14, 2002

No. 228278

Oakland Circuit Court

LC No. 99-017781-CZ

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the circuit court's orders granting summary disposition to defendants and awarding defendant City of Troy taxable costs of \$40, and attorney fees of \$900 pursuant to MCL 600.2591, as a sanction for filing a frivolous action. We reverse.

Plaintiffs argue that the circuit court erred in relying on a prior case, *Kessler v City of Troy*, Oakland Circuit Court No. 97-551870-CH, to conclude that res judicata barred the instant action. Plaintiffs maintain that the prior action in *Kessler* was treated as an appeal from a decision of the Troy Historic District Commission (hereinafter the "commission") for which the court did not properly have jurisdiction because an appeal was never filed. Therefore, plaintiffs contend that the judgment in *Kessler* is void and may not be recognized for purposes of applying res judicata. We disagree with plaintiffs' analysis but agree that res judicata was not applicable.

The applicability of res judicata is a question of law that is reviewed de novo. *Ditmore v Michalik*, 244 Mich App 569, 574; 625 NW2d 462 (2001). "Res judicata bars relitigation of claims that are based on the same transaction or events as a prior suit." *Id.* at 577. Res judicata is applicable when (1) the prior action was decided on the merits, (2) the decree in the prior decision was a final decision, (3) both actions involved the same parties or their privies, and (4) the matter in the second case was or could have been resolved in the first. *Id.* at 576. A judgment is not res judicata unless it is valid and rendered by a court having jurisdiction. *Reid v Gooden*, 282 Mich 495, 498; 276 NW 530 (1938).

Notwithstanding language to the contrary in the order denying summary disposition in *Kessler*, it is clear that the action in *Kessler* was not treated as a conventional appeal. The prior action was initiated by the *Kessler* plaintiffs, members of the commission and residents of the city, as a complaint for injunctive relief to enjoin defendants from relocating the church and

parsonage. Consistent with this posture, defendants were permitted to submit evidence and call witnesses relative to the plaintiffs' request for an injunction, and the court's decision deciding the matter addressed the requirements for injunctive relief.

However, in addressing whether the *Kessler* plaintiffs were entitled to injunctive relief, the court discussed the conditions to be considered under Chapter 13 of the Troy City Ordinance Code. It is clear from the ordinances and MCL 399.205 that the analysis and determination of whether the structures could be moved was to be made by the commission based on evidence presented to that body, and not by the circuit court. Further, the circuit court could only review the matter on an appellate basis and reverse the commission's decision after an initial appeal to the state historic preservation review board. Therefore, to the extent the court in *Kessler* denied injunctive relief based on a failure to show the requisite harm, the decision has no bearing on the instant case, in which plaintiffs challenge defendant's authority to move the structures in the face of the commission's refusal to grant such authority. And, to the extent the court in *Kessler* denied relief on the basis that the commission erred in denying permission to move the structures, the decision was not pursuant to a proper appeal.

In sum, the court in *Kessler* never decided the question whether defendant could move the structures in light of the commission's denial of permission. If commission permission is required under the city ordinances, defendants should be enjoined from moving the structures subject to any proper appeal undertaken by defendants.¹ If approval is not required, then the request for injunction should be denied. We remand to the circuit court for a determination whether the ordinances require that defendant obtain commission approval to move the structures.

In light of our decision, we also reverse the trial court's decision to award sanctions under MCL 600.2591.

Reversed and remanded. We do not retain jurisdiction.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

¹ This assumes that plaintiffs have standing, an issue raised by defendants, but not addressed by the circuit court. On remand, the court shall address this issue if again raised by defendants and necessary to decision.