

STATE OF MICHIGAN  
COURT OF APPEALS

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SUSAN STROUSS,

Plaintiff-Appellant,

v

MICHIGAN DEPARTMENT OF  
CORRECTIONS,

Defendant-Appellee.

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UNPUBLISHED

June 28, 2002

No. 229883

Ingham Circuit Court

LC No. 00-091858-NO

Before: Owens, P.J., and Sawyer and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition, pursuant to MCR 2.116(C)(7). We affirm.

Plaintiff was employed by defendant as a nurse. During her employment, plaintiff filed two sexual harassment complaints, in 1994 and 1997 respectively. Plaintiff alleges that defendant's representatives retaliated against her by filing fraudulent misconduct charges and ultimately transferring her to a different shift and facility. Plaintiff further claims that the transfer would have adversely impacted her ability to attend college and put her in proximity with two inmates who had threatened her in the past. Rather than accept the transfer, plaintiff resigned.

Plaintiff filed suit in federal district court alleging retaliation in violation of Title VII, 42 USC 2000e-3, and a denial of due process and equal protection in violation of 42 USC 1983. The federal district court entered summary judgment for defendant, holding in part that plaintiff's Title VII claim, concerning her 1994 complaint, was barred by the statute of limitations. *Strouss v Michigan Dep't of Corrections*, 75 F Supp 2d 711, 723-724 (ED Mich, 1999), *aff'd* 250 F3d 336 (2001). The court further held that plaintiff did not establish a prima facie case of retaliation regarding her 1997 complaint because she failed to demonstrate a causal connection between her complaint and subsequent transfer. *Id.* at 724-727. After the federal court's decision, plaintiff instituted this action, alleging retaliation in violation of the Elliott-Larsen civil rights act, MCL 37.2101 *et seq.* The circuit court granted defendant's motion for summary disposition on the grounds that plaintiff's claim was barred by the doctrine of res judicata.

Plaintiff argues that the federal court's decision concerning her first complaint was not an adjudication on the merits and that the trial court erred in concluding that the doctrine of res judicata barred her claim. We disagree.

We review a trial court's decision regarding a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(7) permits summary disposition when a claim is barred because of prior judgment. *Maiden, supra* at 118, n 3. "When reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), a court 'must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor.'" *Brennan v Edward D Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001), quoting *Jackson Co Hog Producers v Consumers Power Co*, 234 Mich App 72, 77; 592 NW2d 112 (1999).

The applicability of the doctrine of res judicata is a question of law subject to review de novo on appeal. *Ditmore v Michalik*, 244 Mich App 569, 574; 625 NW2d 462 (2001). The doctrine of res judicata acts to bar subsequent litigation between the same parties when the facts or evidence essential to the two actions are identical. *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). The doctrine of res judicata only applies when: (1) the earlier action was decided on the merits; (2) the decree in that action amounted to a final decision; (3) the matter contested in the second action was, or could have been, resolved in the previous action; and (4) both actions involved the same parties or their privies. *Ditmore, supra* at 576. Pursuant to Michigan's broad approach to the application of res judicata, the doctrine bars both claims that were actually brought by the parties in the earlier suit and also those that the parties, exercising reasonable diligence, could have brought forward at that time. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). Res judicata generally serves to bar litigation based on the same events as a previous claim, regardless of whether the subsequent litigation is brought in a federal or state court. *Id.*

If a plaintiff has litigated a claim in federal court, the federal judgment precludes relitigation of the same claim in state court based on issues that were or could have been raised in the federal action, including any theories of liability based on state law. The state courts must apply federal claim-preclusion law in determining the preclusive effect of a prior federal judgment. [*Id.* at 380-381, quoting 18 Moore, Federal Practice, § 131.21(3)(d), p 131-50.]

Plaintiff claims that the federal decision relative to her 1994 harassment complaint was not a decision on the merits because it was based on subject matter jurisdiction and, alternatively, the statute of limitations. A careful review of the federal court's decision reveals that the court held that the Title VII statute of limitations precluded plaintiff from litigating her 1994 claims concerning Wardell Brown and any of her allegations of retaliation stemming from 1994. *Strouss, supra* at 723-724. Under federal law, a summary judgment on the basis of the defense of the statute of limitations is a judgment on the merits. *Nathan v Rowan*, 651 F2d 1223, 1226 (CA 6, 1981). Moreover, according to *Rivers v Barberton Bd of Education*, 143 F3d 1029, 1032 (CA 6, 1998), a decision on the merits for any portion of the dismissal is adequate to preclude subsequent litigation of any claim that was raised, or could have been raised, in that action. Because we must apply federal law when determining the preclusive effect of a prior federal judgment, *Pierson Sand, supra* at 381, we conclude that the federal district court's decision relating to plaintiff's 1994 harassment complaint was an adjudication on the merits.

Plaintiff further argues that according to our Supreme Court's decision in *Pierson Sand*, *supra* at 384, res judicata does not bar her state claims because her federal claims were dismissed before trial. In *Pierson Sand*, our Supreme Court held that when all federal claims are dismissed before trial, and there are no exceptional circumstances giving the federal court cause to retain supplemental jurisdiction, res judicata would be inapplicable in a subsequent state action. *Id.*

In the present case, we believe that exceptional circumstances exist and that the federal court would have retained jurisdiction over the state claims if plaintiff had raised them at that time. Indeed, the requirements to establish a violation of Title VII or the Elliott-Larsen civil rights act are extremely similar. To state a prima facie claim for retaliation under either law, plaintiff must establish that: (1) she engaged in a protected activity; (2) defendant knew about the exercise of her protected rights; (3) defendant subsequently took an employment action adverse to her; and (3) there was a causal connection between plaintiff's protected activity and the adverse employment action. *Strouss*, *supra* at 724; *Meyer v Center Line*, 242 Mich App 560, 568-569; 619 NW2d 182 (2000). More importantly, for both federal and state retaliation claims, if the defendant articulates a legitimate, non-discriminatory reason for the adverse employment action, the plaintiff bears the burden of proving by a preponderance of the evidence that the articulated reason is mere pretext for discrimination. *Strouss*, *supra* at 727-728; *Roulston v Tendercare, Inc*, 239 Mich App 270, 280-281; 608 NW2d 525 (2000).

Here, the federal court conducted a detailed analysis of plaintiff's retaliation claim. *Strouss*, *supra* at 726-728. The court concluded that even assuming plaintiff demonstrated a prima facie case of retaliation, defendant articulated a legitimate, non-discriminatory reason for her transfer and plaintiff failed to establish that it was a mere pretext for discrimination. *Id.* at 727-728. We note that the facts underlying plaintiff's state retaliation claim are identical to those in her federal retaliation claim. Because the federal court already determined that plaintiff failed to establish a valid retaliation claim relating to her transfer and alleged constructive discharge, we believe that the federal court would have included the state claims in its decision if it had been afforded the opportunity. See *McKane v Lansing*, 244 Mich App 462, 465-466; 625 NW2d 796 (2001) (holding that inherent in the federal court's decision was a decision on each state claim; therefore, res judicata bars relitigation of the decisions despite the fact that the federal court dismissed the state claims without prejudice). Consequently, we conclude that the doctrine of res judicata bars plaintiff from bringing this claim in state court and the circuit court properly granted summary disposition.

Affirmed.

/s/ Donald S. Owens  
/s/ David H. Sawyer  
/s/ Jessica R. Cooper