

STATE OF MICHIGAN
COURT OF APPEALS

RODNEY FREDERICK SIMPSON,
Plaintiff-Appellant,

UNPUBLISHED
September 17, 2002

v

SAFECO LIFE INSURANCE CO.,
Defendant-Appellee.

No. 233806
Wayne Circuit Court
LC No. 00-039650-CK

Before: Smolenski, P.J., and Neff and Bandstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition in favor of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I

Plaintiff is an annuitant entitled to receive \$500 per month pursuant to an annuity contract to which defendant is a party. Under the contract defendant is obligated to make the monthly payment for plaintiff's benefit. Plaintiff has been an inmate in the Michigan corrections system at all times relevant to this litigation.

In 1998, the Michigan State Treasurer filed a complaint against plaintiff and defendant seeking judgment under the State Correctional Reimbursement Act (SCFRA), MCL 800.401 *et seq.* While we do not have the lower court record of the litigation between the state and SAFECO and Simpson, it appears that this action was resolved by agreement between the state and SAFECO placed on the record with Simpson present. The court entered an opinion and order on April 2, 1999, requiring defendant, SAFECO, to "appropriate and apply 90% of the defendant's [plaintiff here] annuity payments, as they become payable, to the State of Michigan as directed by the attorney general." No appeal was taken from the April 2, 1999, opinion and order in favor of the state plaintiff.

In December 2000, plaintiff filed this lawsuit against defendant claiming breach of the annuity contract and breach of fiduciary duty. Defendant moved for summary disposition under MCR 216(C)(10). Briefs were filed, a hearing was held and the trial court entered an order on March 23, 2001, dismissing plaintiff's claims with prejudice and without costs to either party. It is from the March 23, 2001 order that plaintiff appeals.

II

Summary disposition of all or part of a claim or defense may be granted when “except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116(C)(10).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. *Spiek v Dep’t of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The purpose of summary disposition is to avoid extensive discovery and an evidentiary hearing when a case can be quickly resolved on an issue of law. *American Community Mutual Ins Co v Comm’r of Ins*, 195 Mich App 351, 362; 491 NW2d 597 (1992). On appeal, a trial court’s grant or denial of summary disposition will be reviewed de novo. *Spiek, supra*.

III

Plaintiff’s brief on appeal loosely attacks the grant of summary disposition, but essentially argues the claims asserted in his complaint: breach of the annuity contract by defendant and breach of fiduciary duty by defendant. We find that the trial court did not err in granting summary disposition in favor of defendant.

Under the SCFRA an annuity is property subject to a claim for reimbursement for costs of prisoner care. MCL 800.401a(1).¹ Plaintiff’s argument that his annuity payment is exempt from a SCFRA reimbursement claim because it is exempt under federal law is without merit because both statutes cited are inapplicable; 42 USC 407 applies to federal Social Security payments and 26 USC 130 concerns federal Income Tax considerations. Likewise, the annuity in question is not subject to federal ERISA protection, as was the case in *State Treasurer v Abbott*, 249 Mich App 107; 640 NW2d 888 (2001). In addition, unlike the situation in *State Treasurer v Schuster*, 456 Mich 408; 572 NW2d 628 (1998), there is no state statutory provision exempting plaintiff’s annuity payments from claims under the SCFRA.

Plaintiff has completely failed to establish any genuine issue of material fact with regard to his claim that defendant has breached the annuity contract. Defendant has merely met the requirements of the April 2, 1999, order requiring it to make plaintiff’s annuity payments to the state. Likewise, plaintiff failed to establish any issue of fact or legal authority for the claim that defendant owed him a fiduciary duty under the annuity contract.

Perhaps most fundamentally, plaintiff does not explain why this case is not barred by the doctrine of *res judicata*. In ruling on defendant’s motion for summary disposition, the trial court noted that no appeal had been taken from the April 2, 1999, order and aptly held “You don’t get two bites at this apple.”

¹ To the extent that plaintiff argues that the act was amended to include annuity payments in 1996, he is mistaken. The annuity provision was already in the act at the time of the 1996 amendment and it clearly applies to the payments at issue in this case.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001); *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997), aff'd 460 Mich 573; 597 NW2d 82 (1999). The doctrine applies to both facts and law. *Jones v State Farm Mut Automobile Ins*, 202 Mich App 393, 401; 509 NW2d 829 (1993). The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999).

Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002); *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994).

The test to determine whether the two actions involve the same subject is whether the facts are identical in both actions or whether the same evidence would sustain both actions. If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata. *Huggett v DNR*, 232 Mich App 188, 197-198; 590 NW2d 747 (1998), *In re Koernke Estate*, 169 Mich App 397, 399; 425 NW2d 795 (1988). Res judicata bars litigation in the second action not only of those claims actually litigated in the first action, but claims arising out of the same transaction which the parties, exercising reasonable diligence, could have litigated but did not. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

The doctrine of *res judicata* clearly applies to this case and serves to bar plaintiff's claims.

Affirmed.

/s/ Michael R. Smolenski
/s/ Janet T. Neff
/s/ Richard A. Bandstra