

STATE OF MICHIGAN
COURT OF APPEALS

In re JAMES JOY CHARITABLE TRUST.

FORT STREET PRESBYTERIAN CHURCH OF
DETROIT,

Petitioner-Appellant,

v

PRESBYTERY OF DETROIT, INC.,

Respondent-Appellee.

UNPUBLISHED
February 26, 2009

No. 282272
Wayne Probate Court
LC No. 2007-721151-TV

In re DAISY W CONNOR CHARITABLE
TRUST.

FORT STREET PRESBYTERIAN CHURCH,

Petitioner-Appellant,

v

PRESBYTERY OF DETROIT, INC.,

Respondent-Appellee.

No. 282273
Wayne Probate Court
LC No. 2007-721149-TV

Before: Donofrio, P.J., and K. F. Kelly and Beckering, JJ.

PER CURIAM.

In these consolidated appeals, petitioner appeals as of right from the probate court's orders granting summary disposition to respondent¹ Presbytery of Detroit, Inc., pursuant to MCR

¹ Two respondents were named in the petitions below, Presbytery of Detroit, Inc., and the Trustees of the Presbytery of Detroit, Inc. According to appellee's briefs, the latter entity has not
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2.116(C)(7), based on res judicata. These appeals have been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo both a trial court's decision regarding a motion for summary disposition pursuant to MCR 2.116(C)(7) and questions of law, including the application of a legal doctrine such as res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

Res judicata "bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Id.*, p 418 (citations omitted). Petitioner contests only the third element of res judicata. This Court uses a transactional test to determine if a matter could have been resolved in a prior case. *Id.*, p 420. Petitioner does not explicitly address this test, but to the extent that petitioner's argument can be interpreted as referencing the transactional test, the argument seems to be that the operative facts are not related in time because its prior petitions concerned the facts at the time the funds were created, whereas the factors set forth in *In re Americana Foundation*, 145 Mich App 735, 739-740; 378 NW2d 586 (1985), as alleged in its new petitions, concern the administration of the funds.

However, both *In re Americana Foundation* and the new petitions belie petitioner's claim that the new petitions concern the administration, and not the creation, of the funds. Contrary to petitioner's argument, the discussion in *In re Americana Foundation* of the requirements for formation of an express trust focus on the intention as expressed in the articles of incorporation, not the administration of the funds. Similarly, petitioner's allegations in the new petitions, which are derived from the *In re Americana Foundation* analysis, relate to each will, not the administration of the funds.

Accordingly, petitioner has failed to show that res judicata would not apply to bar the new petitions. Petitioner's theory for establishing that charitable trusts had been created could have been resolved in the prior actions.

Affirmed.

/s/ Pat M. Donofrio
/s/ Kirsten Frank Kelly
/s/ Jane M. Beckering

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existed since 1976, when it was merged into the Presbytery of Detroit, Inc.