STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY, Plaintiff-Appellee,	UNPUBLISHED June 4, 2009
v	No. 283372 Genesee Circuit Court
V. K. VEMULAPALLI, Defendant-Appellant.	LC No. 07-085592-CE

Before: Bandstra, P.J., and Owens and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the trial court order granting summary disposition to plaintiff, in this action seeking a judgment against defendant in the amount of $121,650, plus statutory prejudgment interest. We affirm.

This appeal arises from plaintiff's assessment of an administrative penalty against defendant, in the amount of $121,650, pursuant to MCL 324.21313a, for defendant's failure to timely file reports relating to a release of hazardous substances from an underground storage tank. In a prior action, defendant appealed plaintiff's assessment of that penalty against him to the circuit court. The circuit court determined that plaintiff's imposition of the penalty was supported by the administrative record and denied defendant's petition for review of the penalty.

Approximately four months later, plaintiff filed the instant action to collect the unpaid penalty assessed against defendant.[1] The trial court granted plaintiff summary disposition on the basis that the prior action conclusively determined the propriety of the assessment of the penalty,

[1] Several months after plaintiff commenced this action, defendant filed a delayed application for leave to appeal the circuit court's previous determination that the penalty was supported by the administrative record. This Court denied defendant's delayed application for leave to appeal and defendant's motion for reconsideration. Defendant then unsuccessfully sought leave to appeal that ruling in our Supreme Court. Thus, the propriety of plaintiff's assessment of the fine has now been conclusively established.

and that there was no dispute that defendant had not paid the penalty. The trial court thus entered judgment for plaintiff in the amount of $121,650 plus prejudgment interest.

Defendant first argues that the doctrine of res judicata barred plaintiff's filing of the instant action. We disagree.

We first observe that, aside from a recitation of the standard of review and elements of res judicata, the only authority that defendant cites to support its res judicata claim is a dissenting statement to a peremptory reversal order filed by Justice Corrigan in *Houdini Properties, LLC v City of Romulus*, 480 Mich 1022, 1023; 743 NW2d 198 (2008) (Corrigan, J., dissenting). This dissenting statement is not binding authority, and defendant cites no other authority to support the proposition that the doctrine of res judicata bars an administrative agency from filing a subsequent action to collect a penalty, the propriety of which was affirmed in a prior action. "It is not sufficient for a party 'simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority to either sustain or reject his position.'" *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Thus, we conclude that defendant has abandoned this issue on appeal for want of sufficient briefing. *Wilson*, *supra* at 243.

Even if this were not the case, however, defendant's assertion that the doctrine of res judicata prevents plaintiff from instituting this action to collect the unpaid fine lacks merit. The purposes of res judicata are to relieve parties of the cost and vexation of multiple lawsuits, to conserve judicial resources, and encourage reliance on adjudication. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999); *Richards v Tibaldi*, 272 Mich App 522, 530; 726 NW2d 770 (2006). The doctrine 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 action was, or could have been, resolved in the first. *Washington v Sinai Hospital*, 478 Mich 412, 418; 733 NW2d 755 (2007), quoting *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). Thus, "[r]es judicata bars a subsequent action between the same parties when the evidence or essential facts are identical to those in the earlier action." *Sewell v Clean Cut Mgmt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001) (citations omitted), quoting *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999); see also, *Chestonia Twp v Star Twp*, 266 Mich App 423, 429; 702 NW2d 631 (2005). However, if different facts or proofs would be required in the second action, res judicata does not apply. *PT Today, Inc v Comm'r of Financial & Ins Services*, 270 Mich App 110, 146; 715 NW2d 398 (2006).

There is no question that both the prior action and the instant one involved the same parties or that the prior action was decided on the merits. However, the elements of, and the evidence and essential facts required by, the two actions are not identical. The prior action concerned the propriety of the fine assessed to defendant. The trial court's decision on the merits, that imposition of the fine was supported by the administrative record, bars any attempt

to relitigate the propriety of the plaintiff's assessment of the fine against defendant.[2] *Sewell*, *supra*. However, the instant action concerns only defendant's subsequent failure to pay the fine; it does not raise any issue as to the propriety of that fine. To prevail in the instant action, plaintiff was required to establish only that defendant failed to pay the fine, despite the circuit court's determination that it was properly imposed.[3] Except for the amount due and owing, neither the facts established, nor the proofs presented, in the prior action were pertinent to the proof required to establish plaintiff's claim in the instant action. And, an essential element of plaintiff's claim – defendant's failure to pay the fine following his unsuccessful appeal of it – had yet to occur. Consequently, res judicata does not apply to the instant case. *PT Today*, *supra* at 146-147; *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 464; 432 NW2d 338 (1988).

Defendant next argues that the trial court lacked subject matter jurisdiction over plaintiff's action. We disagree.

Whether a trial court has subject matter jurisdiction over a claim is a question of law that this Court reviews de novo. *Harris v Vernier*, 242 Mich App 306, 309; 617 NW2d 764 (2000). This Court also reviews de novo the interpretation and application of a statute or court rule. *Muci v State Farm Mutual Auto Ins Co*, 478 Mich 178, 187; 732 NW2d 88 (2007); *In re Wayne Co Treasurer*, 265 Mich App 285, 290; 698 NW2d 879 (2005), citing *Parkwood Ltd Dividend Housing Assn v State Housing Dev Auth*, 468 Mich 763, 767; 664 NW2d 185 (2003).

"In general, subject matter jurisdiction has been defined as a court's power to hear and determine a cause or matter." *In re Wayne Co Treasurer*, *supra* at 291, citing *Bowie v Arder*, 441 Mich 23, 36; 490 NW2d 568 (1992). The Michigan Constitution provides that:

> The circuit court shall have original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals except as otherwise prohibited by law; power to issue, hear and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the supreme court; and jurisdiction of other cases and maters as provided by rules of the supreme court. [Const 1963, art 6, § 13.]

In addition, MCL 600.605 states:

---

[2] As noted *infra*, the issues defendant now raises were pertinent to, and should have been timely raised in, his previous action challenging the propriety of the fine. Having failed to effectively raise them in that case, defendant is barred from relitigating those issues, now conclusively determined against him, in the instant action.

[3] We decline to hold that the doctrine of res judicata required that plaintiff anticipate that defendant would fail to pay the fine, despite the circuit court's confirmation of defendant's obligation to do so, or that plaintiff was required to seek redress for such a wrong before it occurred.

> Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state.

Thus, circuit courts are presumed to have subject matter jurisdiction over a cause of action unless jurisdiction is expressly barred or conferred upon another court by the Michigan Constitution or by statute. *In re Wayne County Treasurer*, *supra* at 291, citing *Bowie*, *supra* at 38. Further, as our Supreme Court explained in *Bowie*:

> [J]urisdiction over the subject matter is the right of the court to exercise judicial power over that class of cases; not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending; and not whether the particular case is one that presents a cause of action, or under the particular facts is triable before the court in which it is pending, because of some inherent facts which exist and may be developed during the trial. [*Bowie*, *supra* at 39, quoting *Joy v Two-Bit Corp*, 287 Mich 244, 253; 283 NW 45 (1938).]

Defendant specifically argues that the trial court lacked subject matter jurisdiction over this case because the Legislature divested the circuit courts of jurisdiction over cases brought by the DEQ to collect a penalty imposed by the DEQ under MCL 324.21321, when it amended MCL 324.21323, in 1995. We disagree.

In interpreting a statute, the fundamental task of a court is "to discern and give effect to the Legislature's intent as expressed in the words of the statute." *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002). Where the plain and ordinary meaning of the statutory language is clear, further judicial construction is unwarranted. *Nastal v Henderson & Assocs Investigations, Inc*, 471 Mich 712, 720; 691 NW2d 1 (2005). See also, *DiBenedetto v West Shore Hosp*, 461 Mich 394, 402; 605 NW2d 300 (2000). Judicial construction of a statute is proper only where reasonable minds could differ about the meaning of the statute. *Adrian School District v Michigan Public School Employees Retirement System*, 458 Mich 326, 332; 582 NW2d 767 (1998). This Court accords to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning, or is defined in the statute. MCL 8.3a; *Ford Motor Co v Woodhaven*, 475 Mich 425, 439; 716 NW2d 247 (2006); *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999); *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 629; ___NW2d ___ (2009).

1995 PA 22 amended MCL 324.21323, which currently provides, in pertinent part:

> (1) The attorney general may, on behalf of the [DEQ], commence a civil action seeking any of the following:
>
> (a) A temporary or permanent injunction.
>
> (b) Recovery of all costs incurred by the state for taking corrective action.
>
> (c) Damages for the full injury done to the natural resources of this state along with enforcement and litigation costs incurred by the state.

(d) A civil fine of not more than $10,000.00 for each underground storage tank system for each day of noncompliance with a requirement of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the part or rule.

(e) A civil fine of not more than $25,000.00 for each day of noncompliance with a corrective action order issued pursuant to this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts by the violator to comply with the corrective action order.

(f) Recovery of funds provided to the state from the United States environmental protection agency's leaking underground storage tank trust fund.

(2) A civil action brought under subsection (1) may be brought in the circuit court for the county of Ingham, for the county where the release occurred, or for the county where the defendant resides.

1995 PA 22 eliminated former subsection (1)(g), which provided the attorney general with the ability to commence a civil action on DEQ's behalf for "[r]ecovery of penalties imposed under section 21321." 1994 MCL 324.21323.

Defendant does not assert that the trial court lacked the "abstract power to try a case of the kind or character of the one pending." *Bowie*, *supra* at 39. Rather, plaintiff's case was an ordinary civil action over which the trial court had original jurisdiction pursuant to the Michigan Constitution and the relevant statute. Const 1963, art 6, § 13; MCL 600.605. As noted, defendant contends that the Legislature intended to divest the circuit court of jurisdiction over actions to collect penalties imposed by plaintiff under MCL 324.21321 when it deleted subsection (1)(g). However, our Supreme Court has reaffirmed the principle that "[i]n construing such statutes or constitutional provisions, retention of jurisdiction is presumed and any intent to divest the circuit court of jurisdiction must be clearly and unambiguously stated." *Campbell v St John Hosp*, 434 Mich 608, 614; 455 NW2d 695 (1990), citing *Maurizio*, *supra* at 174. Because the Legislature did not clearly and unambiguously state its intent to divest circuit courts of subject matter jurisdiction over civil actions brought by the DEQ to collect a penalty, defendant's argument to the contrary fails. *Campbell*, *supra* at 614.

Further, MCL 324.21323 specifically provides that the Attorney General may commence a civil action to recover a fine pertaining to noncompliance "with a requirement of this part or a rule promulgated under this part" in "the circuit court for the county of Ingham, for the county where the release occurred, or for the county where the defendant resides." Thus, the circuit court plainly had jurisdiction over the instant action.

Defendant also claims that this Court has exclusive original jurisdiction over plaintiff's claim, and thus, that plaintiff should have filed a complaint in this Court, as provided under MCR 7.206(E). We reject this argument as well.

Although MCR 7.206(E) sets forth a procedure "[t]o obtain enforcement of a final order of an administrative tribunal or agency," and this Court has original jurisdiction over petitions to enforce agency determinations under MCR 7.206(E), the relevant court rule applies only to actions where a statute governing the agency specifically provides that the agency (or prevailing party) may petition this Court for a remedy. See, e.g., MCL 423.216(d). Here, there is no statute that requires or permits plaintiff to file petitions for enforcement of its determinations as original actions in this Court. Accordingly, defendant's challenges to the trial court's exercise of subject matter jurisdiction fails.

Defendant next argues that the Attorney General had no standing to bring the action on plaintiff's behalf. We disagree.

In order to preserve an issue involving a party's standing for appellate review, the party must have first raised the challenge to the party's standing in the first responsive pleading or motion. MCR 2.116(C)(5); MCR 2.116(D)(2); *Glen Lake-Crystal River Watershed Riparians v Glen Lake Assn*, 264 Mich App 523, 528; 695 NW2d 508 (2004). Defendant failed to raise his challenge to plaintiff's standing in his first responsive pleading or motion; instead, defendant raises the issue for the first time on appeal. Further, the challenge lacks substantive merit.

"Standing ensures that a genuine case or controversy is before the court." *Michigan Citizens for Water Conservation v Nestle Waters North America*, 479 Mich 280, 294; 737 NW2d 447 (2007). Our Supreme Court has articulated a three-element test to determine whether a plaintiff has standing to bring an action:

> "First, the plaintiff must have suffered an 'injury in fact' - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual and imminent,' not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be 'fairly . . . traceable to the challenged action of the defendant, and not . . . the result [of] the independent action of some party not before the court.' Third, it must be 'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" [*Id*. at 294-295, quoting *National Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 628-629; 684 NW2d 800 (2004).]

Contrary to defendant's assertion, plaintiff satisfies all of the requirements for standing. Plaintiff alleged that it had sustained an "injury in fact" when it asserted that plaintiff had assessed a penalty against defendant in the amount of $121,650, which defendant failed to pay. Certainly, it is without question that this injury was "fairly traceable" to defendant, as opposed to a third party, because the fine was properly assessed against defendant and it was defendant that declined to pay it. Moreover, it is likely that plaintiff's injury, i.e., defendant's failure to pay the penalty, would be redressed by a favorable decision, i.e., an enforceable judgment requiring defendant to pay the penalty. Thus, plaintiff clearly had standing to bring the action. *Id*. at 294.

In addition, as noted above, MCL 324.21323(1)(d) specifically provides that the Attorney General may commence a civil action to seek a fine pertaining to noncompliance "with a requirement of this part or a rule promulgated under this part." Plaintiff imposed the fine under

the authority of MCL 324.21313a; therefore, the Attorney General was authorized under the plain language of MCL 324.21323(1)(d) to file an action to collect the fine.

Finally, defendant argues that the trial court deprived him of his right to due process by dismissing his motion to amend his affirmative defenses and file a counter-complaint, and by denying his wife's motion to intervene in the instant action. We disagree.

This Court reviews the issue of whether a party has been denied due process de novo. *York v Civil Service Comm*, 263 Mich App 694, 699; 689 NW2d 533 (2004). This Court reviews a trial court's decision to deny a motion to amend pleadings or to intervene for an abuse of discretion. *In re Estate of Kostin*, 278 Mich App 47, 51; 748 NW2d 583 (2008); *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 761; 630 NW2d 646 (2001). "An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes." *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008).

The issues defendant now raises were pertinent to, and should have been timely raised in, defendant's previous action challenging the propriety of plaintiff's assessment of the fine.[4] However, defendant failed to properly raise these issues and appellate review of the circuit court's decision is now foreclosed. Consequently, those issues have been conclusively determined and defendant is barred from relitigating them in this action. *Sewell*, *supra* at 569; *VanDeventer*, *supra* at 463. Thus, the trial court did not abuse its discretion by denying defendant an avenue to resurrect these issues in the instant action.

More specifically, we conclude that the trial court did not abuse its discretion by denying defendant's motions to amend his affirmative defenses and file a counter-complaint. Plaintiff correctly points out that defendant's amended pleadings were untimely because they were filed more than 14 days after the responsive pleadings were due, MCR 2.108(B), and thus, that defendant was required to seek leave of the court to amend. MCR 2.118(C). Under such circumstances, leave is to be freely given "when justice so requires." *Id.* However, the amended pleadings that defendant sought to file were plainly an attempt to relitigate the propriety of the fine assessed against him, which was conclusively decided in the previous action, and defendant's attempt to reassert his arguments against the propriety of the fine in this manner necessarily lacked merit. Therefore, the trial court did not abuse its discretion by denying defendant the opportunity to relitigate his liability to pay the fine; justice did not require that the trial court rule otherwise.

Likewise, because the trial court had previously concluded that defendant, and defendant alone, was liable to pay the penalty, and had specifically rejected defendant's contention that he did not own and operate the property within the meaning of the pertinent statutes, the trial court

---

[4] We note that, in the prior action the trial court considered, and rejected, many of defendant's due process arguments when it denied defendant's motion for reconsideration. Thereafter, this Court denied defendant's delayed application for leave to appeal "for lack of merit in the grounds presented[]" in *Vemulapalli v Department of Environmental Quality*, unpublished order of the Court of Appeals, entered February 19, 2008 (Docket No. 279705).

did not abuse its discretion in dismissing defendant's wife's motion to intervene. MCR 2.209(A)(3) states that intervention is proper:

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The only issue presented in this case was whether defendant failed to pay the fine, which was properly assessed against him by plaintiff. Because defendant's wife bears no obligation to pay this fine, there is no basis for her to assert any cognizable interest in the subject of this action. Thus, she necessarily cannot establish that the "disposition of the action may as a practical matter impair or impede" her ability to protect such interest, or that defendant would not be able to adequately represent her interest in the outcome of the case. Consequently, the trial court's decision denying her motion to intervene was within the range of principled outcomes, and will not be disturbed on appeal. *Moore*, *supra*.[5]

We affirm. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Richard A. Bandstra
/s/ Donald S. Owens
/s/ Pat M. Donofrio

[5] We express no opinion as to whether, as plaintiff seems to acknowledge, defendant may commence an action in the Court of Claims against plaintiff for alleged wrongs occurring in connection with the sale of the property at issue to defendant's wife. Such wrongs are not pertinent to the single issue presented by the instant action: whether defendant failed to pay the fine assessed against him by plaintiff.