

STATE OF MICHIGAN
COURT OF APPEALS

HERBERT W. G. CLANTON,

Plaintiff-Appellant,

v

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

UNPUBLISHED

January 12, 2010

No. 286495

Wayne Circuit Court

LC No. 07-726041-CD

Before: Davis, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

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

The doctrine of res judicata bars claims arising out of the same transaction that could have been litigated in a prior proceeding, but were not. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 576; 621 NW2d 222 (2001). The party asserting res judicata must demonstrate 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." *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006).

The circuit court determined that the issues in the present case could have been resolved in Ingham Circuit Court case no. 06-001148-CD. The prior case was dismissed with prejudice because plaintiff did not conform his pleadings to the Michigan Court Rules as ordered, and this Court affirmed the dismissal. *Clanton v Dep't of Transportation*, unpublished decision of the Michigan Court of Appeals, issued October 21, 2008 (Docket No. 277440) (*Clanton I*). An involuntary dismissal due to plaintiff's failure to comply with the court rules or any order of the court will operate as an adjudication on the merits unless the order of dismissal provides otherwise. MCR 2.504(B)(3); *Makowski v Towles*, 195 Mich App 106, 108; 489 NW2d 133 (1992).

"The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two actions." *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993). Here, the circuit court found that the underlying petition for review and

the petition filed in Ingham Circuit Court were “almost identical.” We agree and conclude that the trial court properly applied the doctrine of res judicata.

Finally, the circuit court’s finding that both actions involved the same parties was not in error. Privity may exist between officers of the same government if, in the earlier litigation, the representative of the government had authority to represent its interests in a final adjudication of the issue in controversy. *ANR Pipeline Co v Dep’t of Treasury*, 266 Mich App 190, 213; 699 NW2d 707 (2005). Privity requires a substantial identity of interests and a working functional relationship in which the interests of the nonparty were presented and protected by the party in the litigation. *Id.* at 214. Here, defendant was a party in the previous suit and was able to represent the interests of the other parties concerning plaintiff’s employment complaints.

Affirmed.

/s/ Alton T. Davis
/s/ Karen M. Fort Hood
/s/ Deborah A. Servitto