

STATE OF MICHIGAN
COURT OF APPEALS

MARCUS LEWIS,

Plaintiff-Appellant,

v

COUNTY OF OAKLAND, OAKLAND
COUNTY DEPARTMENT OF CORRECTIONS,
and PETER SCHWARTZ,

Defendants-Appellees.

UNPUBLISHED

June 21, 2012

No. 303722

Oakland Circuit Court

LC No. 2010-114154-NO

Before: SERVITTO, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition to defendants based upon the doctrine of res judicata. We affirm.

Plaintiff filed a negligence claim against defendants in October of 2009 based upon injuries he allegedly received while a passenger in a Department of Corrections van when the van struck a rock/berm. After plaintiff's counsel failed to comply with discovery orders and failed to attend a pretrial conference, the trial court dismissed plaintiff's complaint with prejudice in October of 2010. The complaint in the instant matter is a refile of the same complaint against the same defendants that the trial court dismissed. Defendants thus moved for, and were granted, summary disposition under MCR 2.116(C)(7) on the ground that plaintiff's claim was barred by res judicata.

We review motions for summary disposition de novo. *Willett v Waterford Charter Twp*, 271 Mich App 38, 45; 718 NW2d 386 (2006). Summary disposition under MCR 2.116(C)(7) is appropriate when a claim is barred on the basis of a prior judgment. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). In reviewing a motion under subrule (C)(7), we accept the plaintiff's well-pleaded allegations as true and construe them in the plaintiff's favor. *Id.* We also review de novo as a question of law the applicability of the doctrine of res judicata. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007).

Plaintiff first contends that the trial court erred by finding that the doctrine of res judicata barred relitigation of his claim. "Res judicata bars a subsequent action between the same parties

when the evidence or essential facts are identical.” *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). The application of the doctrine of

[r]es 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. [*Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006).]

Of the four elements of res judicata, plaintiff only contests whether the trial court’s dismissal of his first lawsuit was a decision on the merits. We find that it was.

A dismissal with prejudice operates as an adjudication on the merits for purposes of res judicata. *Wilson v Knight-Ridder Newspapers, Inc*, 190 Mich App 277, 279; 475 NW2d 388 (1991). While the trial court did not cite on the record or in its written order for dismissal the court rule it relied upon in dismissing plaintiff’s first lawsuit, it is irrelevant whether the trial court’s dismissal was made under MCR 2.504(B) or MCR 2.313(B) because MCR 2.504(B) authorizes the dismissal of an action upon a party’s failure to comply with the court rules or a trial court’s order. And, when the trial court enters an involuntary dismissal for a reason other than a lack of jurisdiction or the failure to join a necessary party, the dismissal “operates as an adjudication on the merits.” MCR 2.504(B)(3). Here, plaintiff’s original complaint was specifically dismissed by the trial court with prejudice. Consequently, the dismissal of plaintiff’s original complaint was an adjudication on the merits and plaintiff’s subsequent claim is barred by res judicata. *Wilson*, 190 Mich App at 279; MCR 2.504(B)(3).

Next, plaintiff contends that the trial court erred when it dismissed his original complaint filed in his first lawsuit. However, he has not appealed the trial court’s final order dismissing that complaint. Thus, we lack jurisdiction over the issue. Indeed, plaintiff cannot collaterally attack the trial court’s order dismissing his original complaint in his appeal of the trial court’s decision in a separate action. See, e.g., *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987).

Affirmed.

/s/ Deborah A. Servitto
/s/ Patrick M. Meter
/s/ Karen Fort Hood