IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DAVID K. CHESTER, Appellant, v. WASHINGTON STATE DEPARTMENT OF CORRECTIONS, Respondent.	No. 40866-0-II UNPUBLISHED OPINION

Armstrong, J. — David Chester, an inmate at the Airway Heights Corrections Center, appeals the dismissal of his public records complaint against the Department of Corrections (DOC), arguing that his complaint presents new issues not covered by the settlement agreement reached with DOC in a previous public records action. We affirm.

Facts

On April 10, 2007, Chester submitted a public records request to DOC. Chester sought documents relating to disciplinary proceedings or actions against an Airway Heights Corrections Center physician's assistant. After an exchange of correspondence, DOC disclosed 179 pages of responsive documents to Chester. The agency also informed Chester that 691 pages of documents were exempt from disclosure as "litigation and work product files." Clerk's Papers (CP) at 38. On November 15, 2007, Chester filed a complaint against DOC in Spokane County Superior Court, alleging violations of the Public Records Act (PRA), chapter 42.56 RCW.

The court dismissed the complaint and Chester appealed. While his appeal was pending, he signed a release and settlement agreement with DOC. Chester agreed to release and discharge "any and all existing and future claims, damages and causes of action of any nature" arising out of

the PRA as set forth in his complaint and appeal. CP at 60. The agreement was "the final, conclusive and complete release of all known, as well as all unknown and unanticipated damages" arising out of the incidents set forth in his complaint and appeal. CP at 61. In return, Chester received a settlement of $3,000. Division Three of this court entered the agreement on March 12, 2010, dismissing Chester's appeal with prejudice.

But unbeknownst to DOC, Chester had filed another PRA complaint in Thurston County Superior Court on February 16, 2010, in which he complained about DOC's failure to disclose the same records at issue in the Spokane County complaint. Chester served DOC with this complaint on March 16, 2010, four days after entry of the release and settlement agreement.

DOC moved to dismiss Chester's Thurston County complaint under CR 12(b)(6), arguing that it was barred by the doctrines of res judicata, collateral estoppel, and accord and satisfaction.[1] The trial court granted the motion to dismiss and denied Chester's motion for reconsideration.

ANALYSIS

Dismissal Under CR 12(b)(6)

A. Standard of Review

A trial court's ruling on a motion to dismiss for failure to state a claim on which relief can be granted is a question of law that we review de novo. CR 12(b)(6); *Cutler v. Phillips Petroleum Co.*, 124 Wn.2d 749, 755, 881 P.2d 216 (1994). Courts should dismiss a claim under CR 12(b)(6) only if it appears beyond a reasonable doubt that no facts exist that would justify recovery. *Cutler*, 124 Wn.2d at 755. CR 12(b)(6) motions should be granted sparingly and only where the face of the complaint reveals that there is an insuperable bar to relief. *Cutler*, 124

[1] Chester does not dispute that the State can raise the issues by a CR 12(b)(6) motion.

Wn.2d at 755; *see also Lawson v. State*, 107 Wn.2d 444, 448, 730 P.2d 1308 (1986) (action may be dismissed under CR 12(b)(6) only if it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, that would entitle him to relief).

The State argues on appeal that the trial court properly dismissed Chester's Thurston County action under CR 12(b)(6) because it is barred by the doctrines of accord and satisfaction and res judicata.

B. Accord and Satisfaction

The State contends that the release and settlement agreement was an accord and satisfaction that extinguished Chester's PRA claims based on the records at issue. An accord and satisfaction consists of three elements: (1) a bona fide dispute, (2) an agreement to settle that dispute, which is the accord, and (3) performance of that agreement, which is the satisfaction. *Paopao v. Dep't of Soc. & Health Servs.*, 145 Wn. App. 40, 46, 185 P.3d 640 (2008). When an accord is fully performed, the previously existing claim is discharged; courts presume that the parties have considered and settled every existing difference. *Paopao*, 145 Wn. App. at 46; *Oregon Mut. Ins. Co. v. Barton*, 109 Wn. App. 405, 414, 36 P.3d 1065 (2001).

In the settlement agreement at issue, Chester agreed to release DOC from "any and all existing and future claims, damages and causes of action of any nature arising out of [the] public records act" as described in his Spokane County complaint. CP at 60. The agreement also was "the final, conclusive and complete release of all known, as well as all unknown and unanticipated damages" arising of the incidents set forth in the Spokane County action. CP at 61. In return, Chester received $3,000 "as full and complete settlement." CP at 61.

Chester admits that his Thurston County complaint concerns the same parties and the same documents as those in the Spokane County action, but he asserts that the Thurston County complaint raises new claims regarding DOC's failure to provide an index explaining why it is withholding each individual document. *See* RCW 42.56.210(3) (agency responses refusing disclosure shall include a statement of the exemption authorizing the withholding and an explanation of how the exemption applies to the record withheld).

A comparison of the complaints reveals that Chester's Spokane County complaint focused on DOC's failure to disclose the requested records or claim a statutory exemption within five business days. *See* RCW 42.56.520 (requiring agencies to respond to PRA request within five business days). His Thurston County complaint expands on this issue by alleging that DOC violated the PRA in failing to (1) promptly respond to his request, (2) provide him "the fullest assistance," and (3) "timley [sic] provide an exemption log to explain why the records were not timely produced." CP at 22.

Even if the Thurston County complaint raises new claims, these claims were prohibited by the settlement agreement that barred Chester from raising further claims or seeking additional damages arising out of the same PRA request. The doctrine of accord and satisfaction justified the trial court's dismissal of Chester's complaint.

C. Res Judicata

Furthermore, if the settlement agreement did not bar the Thurston County action by its terms, it did so by operation of the doctrine of res judicata.

Filing two separate lawsuits based on the same event is precluded in Washington. *Ensley*

v. Pitcher, 152 Wn. App. 891, 898, 222 P.3d 99 (2009), *review denied*, 168 Wn.2d 1028 (2010). Under the doctrine of res judicata, a matter which has been litigated or which could have been litigated in a former action should not be permitted to be litigated again. *Ensley*, 152 Wn. App. at 899.

The doctrine of res judicata requires a concurrence of identity in four respects: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made. *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 858, 726 P.2d 1 (1986). Res judicata also requires a final judgment on the merits. *Schoeman*, 106 Wn.2d at 860.

The entry of the release and settlement agreement was a final judgment on the merits, and Chester concedes that the persons and parties in the two actions are the same. *Ryan v. Diafos*, 110 Wn. App. 758, 764, 37 P.3d 304 (2001). Chester argues, however, that the subject matter and causes of action differ because his Spokane County action did not challenge DOC's failure to provide an index explaining why the attorney-client and work-product privileges applied to each document withheld. But the documents at issue in the Thurston County action are the same as those in the Spokane County action, and Chester could have raised this challenge in the Spokane County litigation. Chester's Thurston County complaint is barred by the doctrine of res judicata as well as that of accord and satisfaction, and the trial court did not err in dismissing it under CR 12(b)(6). Consequently, Chester is not entitled to an award of attorney fees on appeal. RCW 42.56.550(4); RAP 18.1.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Armstrong, J.

We concur:

Quinn-Brintnall, J.

Worswick, A.C.J.