IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

GLENN M. LOCKERBY, *Plaintiff/Appellant*,

v.

PIMA COUNTY, *et al.*, *Defendants/Appellees*.

No. 1 CA-CV 16-0421
FILED 5-23-2017

Appeal from the Superior Court in Maricopa County
No. CV2016-090954
The Honorable Robert H. Oberbillig, Judge

AFFIRMED

COUNSEL

Glenn M. Lockerby, Tucson
Plaintiff/Appellant

Pima County Attorney's Office, Tucson
By Julia L. Matter
Counsel for Defendants/Appellees

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

S W A N N, Judge:

¶1 This case is the latest in a series of lawsuits Glenn M. Lockerby has filed challenging alleged errors in past property tax assessments of his home. In this appeal, Lockerby challenges the superior court's dismissal of his amended complaint on issue preclusion grounds. We affirm for the reasons discussed below.

FACTS AND PROCEDURAL HISTORY

¶2 Lockerby sued Pima County, Pima County Assessor Bill Staples, and various employees in the County Assessor's Office in 2013 (the "2013 Case"). He alleged that Pima County improperly assessed his house as "16 to 401 . . . square feet larger than it actually is." Lockerby alleged that he retained a commercial appraiser who identified this error, but Pima County refused to refund his tax overpayments. He further alleged that Pima County again improperly increased the assessed value of his home in 2011 and 2012. Lockerby alleged various theories of recovery, including "Tortious Interference with Plaintiff's right to Peaceful Use of his home," "suppression of evidence in the public record," gross negligence, negligent and intentional infliction of emotional distress, and extortion.

¶3 After several of Lockerby's claims were dismissed, the case proceeded to a bench trial, at which the court found that Pima County had overcharged Lockerby $111.19 for the 2014 tax year. Lockerby appealed that judgment to this court, and we affirmed. *Lockerby v. Pima County*, 1 CA-CV 15-0277, 2016 WL 1158296 (Ariz. App. Mar. 24, 2016) (mem. decision).

¶4 Before our mandate issued, Lockerby filed the current lawsuit against Pima County, the County Assessor, two County Assessor employees, and Dennis Bastron, the attorney who represented Pima County in the 2013 Case. He then amended his complaint, dropping all individual defendants except the attorney. He alleged that Pima County had "deceived each court including [the court in the 2013 Case] regarding . . . how, why, and who illegally added approximately $65,000 of additions to Plaintiff's house without his knowledge." Lockerby also recounted his earlier allegations regarding the erroneous assessments in detail. His amended complaint again stated several theories of recovery, including "abuse of power;" "illegal activity, complicity, and suppression;" tortious interference with his "right to peaceful use of his property;" fraud on the court; and intentional infliction of emotional distress.

¶5 The court dismissed Lockerby's amended complaint on issue preclusion grounds, finding that his new claims arose "out of [his] dissatisfaction with the decisions and processes of previous litigation." The court also determined that Lockerby's amended complaint did not comply with Ariz. R. Civ. P. 8(a), although it did not dismiss on that basis. Lockerby timely appeals.

DISCUSSION

¶6 We review the dismissal of a complaint under Rule 12(b)(6) de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7 (2012). "[W]e accept all well-pleaded facts as true and give [Lockerby] the benefit of all inferences arising therefrom." *Botma v. Huser*, 202 Ariz. 14, 15, ¶ 2 (App. 2002). We will affirm the dismissal only if Lockerby would not have been entitled to relief under any facts susceptible of proof in his complaint. *See Coleman*, 230 Ariz. at 356, ¶ 8.

I. LOCKERBY'S AMENDED COMPLAINT IS BARRED BY ISSUE PRECLUSION AND CLAIM PRECLUSION.

¶7 The doctrine of issue preclusion bars a party from "relitigating an issue identical to one he has previously litigated to a determination on the merits in another action." *Johnson v. O'Connor ex rel. County of Maricopa*, 235 Ariz. 85, 90, ¶ 20 (App. 2014) (internal quotation and citation omitted). The doctrine applies when "(1) the issue was actually litigated in the previous proceeding, (2) the parties had a full and fair opportunity and motive to litigate the issue, (3) a valid and final decision on the merits was entered, (4) resolution of the issue was essential to the decision, and (5) there is common identity of the parties." *Campbell v. SZL Props., Ltd.*, 204 Ariz. 221, 223, ¶ 9 (App. 2003). The last element is not essential when, as here, the doctrine is used defensively to block a plaintiff from reasserting previously litigated claims. *Id.* at 223, ¶ 10. We review de novo whether the court properly applied issue preclusion.[1] *Tripati v. Forwith*, 223 Ariz. 81, 86, ¶ 23 (App. 2009).

¶8 Lockerby does not contend he was deprived of a full and fair opportunity to litigate the 2013 Case. He had the chance to present evidence at trial to support his claims and did so. He also does not appear

[1] Lockerby also contends the court erred in dismissing his amended complaint "without giving any reason for his decisions in fact and law." The court was under no obligation to go into detail concerning the reasons for its ruling. *Wigglesworth v. Mauldin*, 195 Ariz. 432, 439, ¶ 25 (App. 1999).

to challenge the 2013 Case judgment, having already appealed it on substantive grounds. *Lockerby*, 2016 WL 1158296. Moreover, he does not contend that the issues decided there were not essential to that judgment. We therefore focus on the first element; namely, whether Lockerby actually litigated his current claims in the 2013 Case.

¶9 Lockerby alleged in this case that Pima County and its employees had "not refund[ed] all taxes taken inappropriately . . . since 2008, nor correct[ed] all public records from 2008-2016 of [Lockerby's] property." He sought "the return of all monies taken . . . in over-payment of taxes" and "the correction of the record of Plaintiff's property to reflect the removal of all the [Pima County] and its employees' additions."

¶10 Lockerby's 2013 Case complaint alleged much the same. There, he claimed that Pima County and its employees had improperly assessed his property and repeatedly refused to correct it. He sought, among other things, the "return of taxes paid in prior years for the phantom 16 and 400 square feet, then 'amenities,' then a second porch" and an "order . . . setting the valuation of Plaintiff's home." Indeed, in the 2013 Case, the court considered Lockerby's evidence on these issues, found that Pima County's original valuation was "excessive," and granted relief. Therefore, Lockerby litigated his assessment-related allegations in the 2013 Case.

¶11 Lockerby argues his current suit differs from the 2013 Case because Pima County and Bastron "admitted" liability at trial in the 2013 Case, which he contends converted the case from a tax appeal to a tort case. Assuming *arguendo* these admissions occurred, Lockerby does not allege facts that could demonstrate that the court failed to give the admissions appropriate consideration in the 2013 Case. He also does not explain why these alleged admissions entitled him to file a new lawsuit. *See Aldabbagh v. Ariz. Dep't of Liquor Licenses & Control*, 162 Ariz. 415, 417 (App. 1989) ("When testing a motion to dismiss for failure to state a claim, well-pleaded material allegations of the complaint are taken as admitted, but conclusions of law or unwarranted deductions of fact are not.").

¶12 Lockerby's suit is also barred by the doctrine of claim preclusion, which bars subsequent suits by the same parties or their privies based on the same cause of action if there was a prior judgment "on the merits." *Chaney Bldg. Co. v. City of Tucson*, 148 Ariz. 571, 573 (1986). Lockerby's claim here is based on an erroneous assessment of his home and excessive collection of taxes. He obtained a favorable judgment on that claim in the 2013 Case. *Lockerby*, 2016 WL 1158296, *1, *5, ¶¶ 4, 20. Apart from his apparent dissatisfaction with the amount of the award, the cause

of action here is the same as the 2013 Case. The law does not permit a party dissatisfied with a final judgment to simply relitigate those same harms in a new lawsuit. The court did not err in dismissing Lockerby's amended complaint.

II. THE COURT DID NOT ERR IN DISMISSING LOCKERBY'S AMENDED COMPLAINT WITH PREJUDICE.

¶13 Lockerby also contends the court erred by dismissing his amended complaint with prejudice and depriving him of the chance to amend "to include additional acts committed on [the 2013 Case's] court by Appellees." We review a ruling denying leave to amend for an abuse of discretion. *Timmons v. Ross Dress For Less, Inc.*, 234 Ariz. 569, 572, ¶ 17 (App. 2014). Leave to amend should be liberally granted, *MacCollum v. Perkinson*, 185 Ariz. 179, 185 (App. 1996), but is properly denied in cases of "'undue' delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments or undue prejudice to the opposing party," *Carranza v. Madrigal*, 237 Ariz. 512, 515, ¶ 13 (2015) (internal citation omitted).

¶14 Lockerby did not file a proposed amended complaint under Rule 15(a)(2) and does not explain how he could have further amended his complaint to overcome a motion to dismiss. We thus find no abuse of discretion.

III. THE COURT DID NOT ERR IN DECLINING TO HOLD AN EVIDENTIARY HEARING.

¶15 Finally, Lockerby challenges the court's refusal to grant him an evidentiary hearing before dismissing his amended complaint. An evidentiary hearing was not necessary because the court must assume the truth of the complaint's allegations when considering a Rule 12(b)(6) motion to dismiss. *See Sensing v. Harris*, 217 Ariz. 261, 262, ¶ 2 (App. 2007). Even doing so, Lockerby's suit is barred by issue and claim preclusion. There was no abuse of discretion.

CONCLUSION

¶16 For the foregoing reasons, we affirm. Appellees are entitled to their costs on appeal upon compliance with ARCAP 21.

AMY M. WOOD • Clerk of the Court
FILED: AA