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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

MACAULAY TIMOTHY KRUEGER, Plaintiff/Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, Defendant/Appellee.	2 CA-CV 2009-0069 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. SP20081767

Honorable Sharon Douglas, Judge Pro Tempore

AFFIRMED

Rev. Macaulay Timothy Krueger — Sheboygan, Wisconsin
In Propria Persona

Terry Goddard, Arizona Attorney General
By Dawn R. Williams — Tucson
Attorneys for Defendant/Appellee

V Á S Q U E Z, Judge.

¶1 In this paternity and custody action, appellant Macaulay Krueger appeals from the juvenile court's order dismissing his complaint on the ground his claims were barred by the doctrine of claim preclusion. Finding no error, we affirm.

Facts and Procedural Background

¶2 In August 2008, Krueger filed a previous "Complaint for Paternity with Custody, Parenting Time and Child Support" in cause number SP20081196. The complaint concerned a child identified only as "Travis," who was in the custody of the Arizona Department of Economic Security (ADES). Krueger claimed the child's mother, whom he apparently did not know, had impregnated herself with his semen over ten years earlier and he was thus the child's biological father. Judge Rubin dismissed the case with prejudice on September 12, finding that Krueger had failed to state a claim and that, even if he were Travis's biological father, Krueger's rights had been terminated pursuant to judicial proceedings concluded several years earlier. Krueger filed a notice of appeal on October 31, which this court dismissed as untimely.

¶3 Krueger initiated the present action on December 12, 2008, by filing a second "Complaint for Paternity with Custody, Parenting Time and Child Support." He simultaneously filed an affidavit acknowledging the prior litigation for custody of Travis in SP20081196. However, he alleged that case had been "unconstitutionally dismissed" and stated he was "moving forward" with the current action because "'relief' was not granted" in the prior case. Krueger filed an application for entry of default when ADES did not file

an answer timely. The clerk of the court entered ADES's default on February 9, 2009. On February 12, ADES filed its answer requesting that "all relief sought by [Krueger] be denied and that this action be summarily dismissed." The juvenile court dismissed the case, finding Krueger's claims "ha[d] been previously fully litigated in cause number SP20081196" and "[f]urther litigation of this matter is barred by the doctrine of [claim preclusion]." This appeal followed.

Discussion

¶4 Krueger argues the juvenile court erred in dismissing the case based on claim preclusion. In reviewing a trial court's ruling on a motion to dismiss, we "assume the truth of the allegations set forth in the complaint and uphold dismissal only if the plaintiff[] would not be entitled to relief under any facts susceptible of proof in the statement of the claim." *Mohave Disposal, Inc. v. City of Kingman*, 186 Ariz. 343, 346, 922 P.2d 308, 311 (1996). Because claim preclusion is a question of law, our review is de novo. *Pettit v. Pettit*, 218 Ariz. 529, ¶ 4, 189 P.3d 1102, 1104 (App. 2008). Under the doctrine of claim preclusion, "'a final judgment on the merits bars further claims by parties . . . based on the same cause of action.'" *Corbett v. Manor Care of Am., Inc.*, 213 Ariz. 618, ¶ 13, 146 P.3d 1027, 1033 (App. 2006), *quoting Montana v. United States*, 440 U.S. 147, 153 (1979). An order dismissing a case with prejudice is a final judgment on the merits. *4501 Northpoint LP v. Maricopa County*, 212 Ariz. 98, ¶ 17, 128 P.3d 215, 218 (2006).

¶5 Notwithstanding Judge Rubin's dismissal of SP20081196 with prejudice, Krueger argues claim preclusion does not apply because "[SP]20081196 was assigned to a judge [who] was not impartial and a court case is not considered fully litigated if a judge does not take into consideration all facts and dismisses the case because of personal feelings and lack of belief of facts presented." Krueger contends he "asked the superior court for a new trial because of judge bias . . . and a new Trial was granted via acceptance and assignment of [a] case number and Judge" in the present case. But any motion for new trial relating to SP20081196 could only have been filed, or granted, under that cause number. *See* Ariz. R. Civ. P. 59(b). Thus, the clerk's accepting of Krueger's complaint and assigning a case number and judge in the present case could not be construed as granting a new trial in SP20081196. Although Krueger filed an appeal in SP20081196, it was dismissed by this court as untimely.[1] *See* Ariz. R. P. Juv. Ct. 104(A) (specifying procedure for appeals from juvenile court).

¶6 Krueger alternatively contends the present case is an unrelated and distinct cause of action because SP20081196 involved a "paternity complaint," whereas here he filed a "custody complaint." However, both complaints were titled "Complaint for Paternity with Custody, Parenting Time and Child Support," and in both Krueger sought an order of paternity and sole custody of the child. The two actions involved the same claims. Because

[1]*Macaulay K. v. State of Arizona and Jennifer A.*, No. 2 CA-JV 2008-0116 (order filed Nov. 12, 2008).

SP20081196 was dismissed with prejudice, Krueger was not entitled to file this action. *See Pettit*, 218 Ariz. 529, ¶ 4, 189 P.3d at 1104 (party standing in same capacity in subsequent litigation on same cause of action barred from raising either "facts actually litigated" or "points which might have been litigated" in earlier action). The juvenile court therefore did not err in dismissing the present complaint. *See Corbett*, 213 Ariz. 618, ¶ 13, 146 P.3d at 1033.[2]

¶7 Krueger raises other issues relating to the original proceedings for termination of his parental rights and his allegation that Travis had been kidnapped by the mother. However, "the scope of our review is limited by the posture of the case presented on appeal," and we therefore "have no opinion" on these issues. *Young v. Bishop*, 88 Ariz. 140, 147-48, 353 P.2d 1017, 1022 (1960). These issues relate to a separate cause of action and a nonparty to this litigation and thus have no bearing on the issues presented here. Nor can we consider Krueger's arguments about matters that purportedly occurred after he filed his notice of appeal or federal causes of action he did not raise below.[3] *See Navajo Nation v. MacDonald*,

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[2]Because we conclude Krueger was not entitled to file this action, we need not address his argument that the juvenile court erred in declining to enter a default judgment against ADES. In any event, this argument is without merit. Pursuant to Rule 44(A)(3), Ariz. R. Fam. Law P., a default does not become effective if the party claimed to be in default files a response within ten days from the filing of the application for entry of default. ADES filed its response three days after Krueger filed his application for entry of default. There was thus no error.

[3]We are not persuaded by Krueger's contention that his "word usage" and the "violations" listed in his complaint were sufficient to put the juvenile court on notice that he intended to assert claims under 42 U.S.C. § 1983 and the Parental Kidnapping Prevention Act. *See Best v. Edwards*, 217 Ariz. 497, ¶ 28, 176 P.3d 695, 702 (App. 2008) (appellate

180 Ariz. 539, 547, 885 P.2d 1104, 1112 (App. 1994) (no jurisdiction over rulings made by trial court after notice of appeal filed); *Woodworth v. Woodworth*, 202 Ariz. 179, ¶ 29, 42 P.3d 610, 615 (App. 2002) (issue not raised below waived on appeal).

Disposition

¶8 For the reasons stated above, we affirm the juvenile court's order of dismissal.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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J. WILLIAM BRAMMER, JR., Judge

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review waived when cause of action insufficiently raised in complaint).