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UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

NOSOUD ALEMARAH,
Plaintiff-Appellant,

v.

GENERAL MOTORS, LLC,
Defendant-Appellee.

No. 20-1346

Appeal from the United States District Court
for the Eastern District of Michigan at Detroit.
No. 2:19-cv-10556—Bernard A. Friedman, District Judge.

Decided and Filed: November 18, 2020

Before: NORRIS, SUTTON, and KETHLEDGE, Circuit Judges.

COUNSEL

ON BRIEF: Raymond Guzall III, RAYMOND GUZALL III, P.C., Farmington Hills, Michigan, for Appellant. Martin C. Brook, Mami Kato, OGLETREE, DEAKINS, NASH, SMOAK & STEWART, PLLC, Birmingham, Michigan, for Appellee.

The court delivered a PER CURIAM opinion. KETHLEDGE, J. (pg. 7), delivered a separate concurring opinion.

OPINION

PER CURIAM. Nosoud Alemarah sued her former employer, General Motors, in both state and federal court, claiming employment discrimination based upon identical factual allegations. The state suit asserted state claims, the federal suit, federal ones. The state court dismissed that case after the parties settled those claims; the federal district court granted

summary judgment in favor of GM. Alemarah now challenges the court's grant of summary judgment, its order denying her motion to recuse the district judge, and an order awarding costs to GM. We affirm, albeit with some concerns as to the recusal motion.

I.

In 2018, Alemarah sued GM and her former supervisor in Michigan state court, asserting claims under the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq. In February 2019, Alemarah filed a nearly identical complaint in federal court, asserting claims under Title VII of the Civil Rights Act of 1964 and naming only GM as a defendant.

In October 2019, the state court submitted Alemarah's action to case evaluation (a form of alternative dispute resolution) under MCR 2.403. GM and Alemarah each accepted the mediation panel's recommendation—a $400,000 case-evaluation award—and the state court entered an order dismissing Alemarah's claims with prejudice.

In early January 2020, GM moved for summary judgment on res-judicata grounds in the federal case. Alemarah moved (frivolously) to strike GM's motion and to sanction GM for filing it. She also filed a motion to recuse the district judge, Bernard Friedman. The district court denied Alemarah's motions, granted summary judgment in favor of GM, and taxed $4,715 of costs against Alemarah. This appeal followed.

II.

A.

We review de novo the district court's grant of summary judgment in favor of GM. *See Smith v. Wal-Mart Stores, Inc*., 167 F.3d 286, 289 (6th Cir. 1999).

The court granted summary judgment to GM on the ground that the state court's dismissal of Alemarah's state-law claims was res judicata as to her federal claims here. A state-court judgment has the same preclusive effect in federal court as it does in the rendering state. *See* 28 U.S.C. § 1738; *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007). In Michigan, res judicata "bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the

second case was, or could have been, resolved in the first." *Adair v. State*, 680 N.W.2d 386, 396 (Mich. 2004).

Alemarah challenges all three elements. As to the first, she says that the state court's order dismissing her claims after acceptance of the case evaluation was not a "judgment on the merits." But Michigan courts have said otherwise: "[A]cceptance of a case evaluation is essentially a consent judgment, and [r]es judicata applies to consent judgments." *Garrett v. Washington*, 886 N.W.2d 762, 766 (Mich. Ct. App. 2016) (internal citations and quotation marks omitted).

As to the second element, Alemarah argues that the parties in her federal and state cases were different because the state case had an additional defendant—namely her supervisor. But the relevant inquiry "is whether the plaintiff and defendant in the precluded action were opposing parties in the first action; the presence of additional [parties] does not affect the analysis." *U.S. ex rel. Sheldon v. Kettering Health Network*, 816 F.3d 399, 416 (6th Cir. 2016) (applying Michigan law). Here, Alemarah and General Motors were parties in both cases, so the second element is met.

The same is true for the third element, *i.e.*, that the matter in the second case could have been resolved in the first. As applied in Michigan, res judicata "bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 680 N.W.2d at 396. Here, nobody disputes that Alemarah could have litigated her federal claims in her state-court action. Indeed her two complaints are nearly identical. The district court therefore properly granted summary judgment to GM.

B.

Alemarah argues that Judge Friedman should have recused himself from this case. We review a district court's denial of a recusal motion for an abuse of discretion. *See United States v. Howard*, 218 F.3d 556, 566 (6th Cir. 2000).

A federal judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or "[w]here he has a personal bias or prejudice concerning a party[.]" 28 U.S.C. § 455(a), (b)(1). Here, Alemarah asserts that Judge Friedman demonstrated hostility toward her counsel through a sequence of events that she regards as retaliatory. In January 2020, the court scheduled a hearing for GM's summary-judgment motion at Wayne State University Law School. Three days later, Alemarah's counsel sent the case manager an email in which he asserted at some length that the law-school environment would be difficult for his client emotionally. Counsel also asserted the following:

> [N]either of the parties [sic] attorneys nor any judge would be able to completely set aside the theater atmosphere of attempting to educate students and play to the crowd which will detract from the job which needs to be performed by the attorneys and the court. Arguments will be overly drawn out and skewed for the purposes of educating and playing to the students, as will the commentaries of the court.

Counsel therefore requested that, "if oral argument is needed by the court in this case that oral argument be held in a court room."

Three days later, Judge Friedman sent a letter to Alemarah's counsel—by all appearances *ex parte*—in which he first agreed to change the hearing venue and then asserted as follows:

> Your additional comments I found to be highly offensive and entirely uncalled for. They reveal your lack of understanding of the purpose of hearing motions at a law school and your unfamiliarity with how the Court conducts these proceedings. Contrary to your uninformed assumptions, there is no "theater atmosphere," no one "play[s] to the crowd," the oral arguments are not "overly drawn out and skewed for the purpose of educating and playing to the students," and the attorneys are not called upon to "perform." Motion hearings held at a law school are official court proceedings, and the same procedures and rules, including those concerning decorum, apply there just as they do in the courtroom.

Judge Friedman closed the letter as follows:

> Your objection to holding motion hearings at Wayne makes clear to me that you do not appreciate your professional obligation to participate in activities that are beneficial to the public. I therefore intend to ask Chief Judge Denise Page Hood, who is also the chair of this Court's pro bono program, to place your name on the list of attorneys who are to be assigned cases through this program.

Judge Friedman thereafter cancelled the motion hearing and ruled in GM's favor on every remaining motion. In the court's order denying reconsideration of its grant of summary judgment, the court described Alemarah as "apparently having been shocked awake" by that grant. In its order denying the motion to recuse, the court asserted that "plaintiff's imagination has gotten the better of her" as to whether the court's letter had been "angry"; and that, "[a]gain, plaintiff is hallucinating" as to her argument that the district court had retaliated against her and her counsel.

We disagree with the court's assertion that its comments as described above—particularly the "hallucination" one—were merely "ordinary admonishments[.]" *Liteky v. United States*, 510 U.S. 540, 556 (1994). And a reasonable observer could conclude that the court's statement in its letter to Alemarah's counsel (which was itself out of the ordinary)—that "[y]our additional comments I found to be highly offensive and entirely uncalled for"—was an expression of anger on the court's part. Yet those comments were not "so extreme as to display clear inability to render fair judgment." *Id.* at 551.

Closer to the line was Judge Friedman's statement, in the same letter, that he intended to ask the court's chief judge "to place your name on the list of attorneys who are to be assigned cases through" the court's pro bono program. That action could easily be seen as punitive, notwithstanding Judge Friedman's assertion that its purpose was to educate counsel about his "professional obligation[s]." Viewed in the context of the frivolousness of several of Alemarah's motions, however, we conclude that the cited comments were the sort of "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display." *Id.* at 555–56. Thus, though we by no means condone the court's actions, we hold that the court did not abuse its discretion in denying the motion to recuse.

C.

Finally, Alemarah challenges the court's order denying her motion to "overturn" the $4,715 of costs taxed in GM's favor. As an initial matter, we do have jurisdiction to review this issue, even though (as GM points out) Alemarah's notice of appeal did not designate this order

as part of the appeal. The order was filed on April 6, 2020, which gave Alemarah until May 6 to file a notice of appeal as to it. *See* Fed. R. App. P. 4(a)(1)(A). Alemarah did not file another document styled as a notice of appeal, but on May 1 she did file with our court a "Civil Appeal Statement" that said this order was part of her appeal. That document provided "the notice required by" Appellate Rule 3 and thus was "the functional equivalent of what the rule requires." *Smith v. Barry*, 502 U.S. 244, 248 (1992) (internal quotation marks omitted); *see also* Fed. R. App. P. 3(c)(4) ("An appeal must not be dismissed for informality of form or title of the notice of appeal[.]"); Fed. R. App. P. 4(d).

As for the merits, we review de novo whether taxed expenses are allowable under 28 U.S.C. § 1920. *See Colosi v. Jones Lang LaSalle Americas, Inc.*, 781 F.3d 293, 295 (6th Cir. 2015). We review a court's determination that costs are reasonable and necessary for an abuse of discretion. *See id.*

Here, GM submitted as costs the amount it paid for deposition transcripts that it attached to its motion for summary judgment. Suffice it to say that the costs were allowable and that the district court did not abuse its discretion in taxing them.

*   *   *

The district court's judgment is affirmed.

CONCURRENCE

KETHLEDGE, Circuit Judge, concurring. I join the court's opinion in full, and write further with regard to the district court's reaction to the reservations of Alemarah's counsel as to holding oral argument at a law school rather than in a courtroom. The district court's desire to provide law students with an opportunity to observe oral arguments is itself commendable, and, properly conducted, oral arguments at a law school can benefit everyone concerned. Respectfully, however, the court's letter to counsel—in which the court said that it personally found counsel's reservations "to be highly offensive and entirely uncalled for," and in which the court stated its intention "to place your name on the list of attorneys who are to be assigned cases" to litigate pro bono—was at best an overreaction.

Indeed I have some sympathy with counsel's reservations. As a practitioner, I participated in oral arguments held at law schools; and in one of them, I distinctly recall, the proceedings indeed focused more on playing to the gallery than they did on finding the right answer to the question at hand. (Of course no one complained to the court afterward.) That does not mean courts should never hold arguments outside a courtroom. But a court must remember that our cases are vastly more important to the parties than they are to any observer.