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IN THE
COURT OF APPEALS OF INDIANA

Takila Walker,
Appellant-Plaintiff,

v.

Herman & Kittle Properties, Inc. and Washington Pointe Apartments,
Appellees-Defendants.

November 30, 2021

Court of Appeals Case No. 21A-CT-284

Appeal from the Marion Superior Court

The Honorable David J. Dreyer, Judge

Trial Court Cause No. 49D16-2007-CT-22358

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Plaintiff, Takila Walker (Walker), appeals the trial court's Order granting a Motion to Dismiss her Complaint in favor Appellees-Defendants, Herman and Kittle Properties Inc., and Washington Pointe Apartments (collectively, the Appellees).

[2] We affirm in part, reverse in part, and remand for further proceedings.

ISSUE

[3] Walker presents the court with one issue on appeal which we restate as: Whether the trial court erred by dismissing her complaint.

FACTS AND PROCEDURAL HISTORY

[4] On November 12, 2019, Walker, *pro se*, filed a hand-written notice of claim in the Marion County Small Claims Court against the Appellees. Walker, who was leasing an apartment from the Appellees at the time, sought damages amounting to $8,000 against the Appellees allegedly due to "negligence, harassment, wrongful use of power[,] inhabitable living conditions, unlawful removal of vehicle, invasion of privacy, knowingly aware of employee contributing alcohol and narcotics to my minor children, intimidation, emotional distress, [and] order to move at their total expense." (Appellees' App. Vol. I, p. 25) (sic throughout). On December 18, 2019, Walker filed an amended notice of claim and listed her claims as "inhabitable living conditions, wrongful use of power, harassment, emotional distress, pain [and] suffering, attorney fees, court costs, humiliation, knowingly aware of employee contributing alcohol and

narcotics to my minor children, move out at their total expense, days loss of pay from work." (Appellant's App. Vol. II, p. 27) (sic throughout). Our Odyssey[1] search shows that on September 29, 2020, the Small Claims Court issued an order scheduling the matter for a hearing on October 27, 2020.

[5] On July 14, 2020, while her Small Claims Court case was pending, Walker filed in the Marion County Superior Court a complaint which is the subject of this appeal. Walker sought damages amounting to $2.5 million against the Appellees and her complaint consisted of the following allegations:

> Inhabitable [sic] living conditions, wrongful use of power, knowingly intentional torture, [g]ross negligence, negligent infliction of emotional distress, constructive eviction, mental anguish, nuisance, breach of implied warranty of habitability, breach of contract, pain [and] suffering, voluntary acts against my health, attorney costs, intentional disregard of my families [sic] health, punitive damages, [and] personal injury.

(Appellees' App. Vol. I, p. 19).

[6] On October 16, 2020, the Appellees moved to dismiss Walker's amended complaint in the Superior Court pursuant to Trial Rule 12(B)(8), arguing that the

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[1] The sparsity of the record before us prompted our review of the trial court record for Cause No. 4999 in the Odyssey case management system. *See Horton v. State*, 51 N.E.3d 1154, 1160-61 (Ind. 2016) (observing that Evidence Rule 201(b)(5) "now permits courts to take judicial notice of 'records of a court of this state'" and that such records are presumptively sources of facts "that cannot reasonably be questioned.").

Rule allows a trial court to dismiss an action if the same action is pending in another state court of this state, *i.e.*, the case pending in the Small Claims Court.

[7] Meanwhile, on October 27, 2020, the Small Claims Court conducted a hearing as to Walker's amended notice of claim. On November 2, 2020, the Small Claims Court issued an order, deciding that Walker had failed to prove by a preponderance of the evidence that the apartment was unhabitable or that she was constructively evicted. In particular, the court found that Walker had prevented the Appellees from accessing the apartment to make necessary repairs.[2]

[8] On January 4, 2021, the Marion County Superior Court conducted a hearing as to the Appellees' motion to dismiss. The Appellees argued that Walker had initiated substantially two similar lawsuits against them, the subject matter was identical, and that the only difference between the two cases was the amount of damages Walker was requesting. Walker, still appearing *pro se*, argued that she was not relitigating the same issues. She claimed that the Small Claims Court had advised her that issues pertaining to her "health [were] out of [its] jurisdiction" and the only arguments and evidence she was allowed to present related to property damage and the uninhabitable conditions of her apartment. (Transcript pp. 5-6). Following the parties' arguments, the trial court took the

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[2] The Small Claims Court further determined that after reviewing documentation and extensive testimony by all parties, the evidence was not applicable to the remainder of Walker's other accusations, namely, wrongful use of power, harassment, emotional distress, pain and suffering, attorney fees, court costs, humiliation, and loss of wages, as premised in her amended notice of claim.

matter under advisement. On January 10, 2021, the trial court issued an Order stating

> [The Appellees] move to dismiss the matter as having been previously decided in small claims court. After consulting the record of [Walker's] small claims case against [the Appellees], the [c]ourt finds that the motion should be granted.
>
> Therefore, the [c]ourt grants [the Appellees'] Motion to Dismiss. The case is dismissed with prejudice in favor of [the Appellees] and against [Walker].

(Appellees' App. Vol. I, p. 12).

[9] Walker now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] The Appellees argue that the trial court properly dismissed Walker's complaint pursuant to Indiana Trial Rule 12(B)(8). In turn, Walker argues that the Marion County Superior Court improperly dismissed her complaint, and the order ran afoul to the principles of *res judicata.*

[11] We begin our analysis with an overview of the relevant provisions of Indiana Trial Rule 12(B)(8) which permits dismissal of an action where "[t]he same action [is] pending in another state court of this state." This rule "applies where the parties, subject matter, and remedies are precisely the same, and it also applies when they are only substantially the same." *Beatty v. Liberty Mut. Ins. Grp.*, 893 N.E.2d 1079, 1084 (Ind. Ct. App. 2008). Whether two actions are the

same under the rule "depends on whether the outcome of one action will affect the adjudication of the other." *Kentner v. Ind. Pub. Emprs' Plan, Inc.,* 852 N.E.2d 565, 570 (Ind. Ct. App. 2006) (quoting *Vannatta v. Chandler*, 810 N.E.2d 1108, 1110 (Ind. Ct. App. 2004)), *trans. denied*. "[I]nasmuch as it is a question of law," we apply a *de novo* standard of review to the grant or denial of a motion to dismiss under Trial Rule 12(B)(8). *Id.* We will focus our analysis on the respective parties, subject matter, and remedies in the instant case and the Small Claims Court case.

[12] At the time the Appellees filed their motion to dismiss, Walker's small claims action was pending. On November 2, 2020, the Small Claims Court denied her small claims action. Walker thereafter pursued an appeal in the superior court, but she was redirected to file her appeal with our court. Walker did not pursue an appeal with our court. Meanwhile, on January 4, 2021, the Superior Court heard and granted the Appellees' motion to dismiss Walker's complaint filed in its court.

[13] We note that at the time the Superior Court granted the Appellees' motion to dismiss pursuant to Trial Rule 12(B)(8), the Small Claims Court had already denied Walker's claim. Moreover, Walker did not timely appeal the Small Claims Court judgment. With that said, we find that Walker's small claims action was not another "pending" case under the strict definition of the word. Therefore, there was no other action technically "pending in another state court of this state." *Beatty*, 893 N.E.2d at 1084. A dismissal of Walker's small claims case pursuant to Trial Rule 12(B)(8),would have therefore been improper.

Having decided there was no action pending before another Indiana court at the time of dismissal, we find that Trial Rule 12(B)(8), is inapplicable in this appeal.

[14] Turning to Walker's claim that that the dismissal of her complaint filed in the Superior Court ran afoul of the principal of *res judicata*, we note that the doctrine of *res judicata* prevents the re-litigation of issues that are essentially the same. *See Earl v. State Farm Mut. Auto. Ins. Co.*, 91 N.E.3d 1066, 1074 n. 5 (Ind. Ct. App. 2018), *trans. denied*. The doctrine of *res judicata* encompasses the principles of issue preclusion and claim preclusion. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). Claim preclusion applies when a final judgment on the merits has been entered and acts as a complete bar to subsequent litigation on the same claim between identical parties. *M.G. v. V.P.*, 74 N.E.3d 259, 264 (Ind. Ct. App. 2017).

> When claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action. Claim preclusion applies when the following four factors are present: (1) the former judgment was rendered by a court of competent jurisdiction; (2) the former judgment was rendered on the merits; (3) the matter now at issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action was between parties to the present suit or their privies.

Id. (quotation omitted). In determining whether claim preclusion should apply, it is helpful to inquire whether identical evidence will support the issues involved in both actions. *Richter v. Asbestos Insulating & Roofing*, 790 N.E.2d 1000, 1003 (Ind. Ct. App. 2003), *trans. denied*.

[15] Also relevant to this appeal is Indiana Small Claims Rule 11(F). That Rule states that a judgment of a Small Claims Court "shall be *res judicata* only as to the amount involved in the particular action and shall not be considered an adjudication of any fact at issue in any other action or court." Ind. Small Claims Rule 11(F). The rule, however, does not allow a party to relitigate a claim upon which judgment has been entered in a small claims case. *Cook v. Wozniak*, 500 N.E.2d 231, 233 (Ind. Ct. App. 1986), *adopted and affirmed*, 513 N.E.2d 1222 (Ind. 1987) ("[to permit] a plaintiff who recovered nothing in a small claims action to sue again on the same claim in another court would be 'sheer futility.'"). *Cook*, 500 N.E.2d at 233. Instead, S.C.R. 11(F) was intended primarily to "limit issue preclusion where some fact in the small claim action is at issue in another case," and to "also apply to claim preclusion to the extent that claim preclusion would ordinarily bar all matters which might have been litigated but were not actually litigated in the small claims action." *Cook* at 233.

[16] On appeal, Walker claims that the "question canvased before the [small claims] court was only on damages to [her] property and on uninhabitable premises. Since this issue was litigated between the parties and resolved at the [small claims] court, then *res judicata* only applies in so far as that question was decided" at the small claims court. (Appellant's Br. p. 7). In summary, Walker contends that her small claims action was not entirely rendered on the merits for purposes of application of the *res judicata* doctrine.

[17] We note the following claims were set for trial in the small claims court: "inhabitable (sic) living conditions, wrongful use of power, harassment,

emotional distress, pain [and] suffering, attorney fees, court costs, humiliation, knowingly aware of employee contributing alcohol and narcotics to my minor children, move out at their total expense, days loss of pay from work." (Appellant's App. Vol. II, p. 27) (sic throughout). Walker's allegations as cited in the complaint she filed in the Superior Court involved the following allegations:

> Inhabitable [sic] living conditions, wrongful use of power, knowingly intentional torture, [g]ross negligence, negligent infliction of emotional distress, constructive eviction, mental anguish, nuisance, breach of implied warranty of habitability, breach of contract, pain [and] suffering, voluntary acts against my health, attorney costs, intentional disregard of my families [sic] health, punitive damages, [and] personal injury.

(Appellees' App. Vol. I, p. 19). Our Odyssey search reveals that the Small Claims Court only decided Walker's allegation on whether her apartment was uninhabitable. As for Walker's other claims, it appears that the Small Claims Court did not issue a determination on the merits. Furthermore, during the motion to dismiss hearing, Walker testified that the Small Claims Court did not entertain her other claims other than the issue of habitability and that fact was not disputed by the Appellees.

[18] As noted, *res judicata*, which "serves to prevent repetitious litigation of disputes that are essentially the same," applies only when "the former judgment was rendered on the merits," among other things. *Helms v. Rudicel*, 986 N.E.2d 302, 308 (Ind. Ct. App. 2013), *trans. denied*. A judgment on the merits is one

"delivered after the court has heard and evaluated the evidence and the parties' substantive arguments." BLACK'S LAW DICTIONARY (10th ed. 2014).

[19] The judgment of the Small Claims Court was limited solely to damages caused to Walker based on her claim that her apartment was uninhabitable, and the Small Claims Court decided nothing with regard to her other issues. Although Walker raised similar allegations in both actions, we find that the unappealed small claims order was *res judicata* only in relation to whether the Appellees breached the implied warranty of habitability. That order was not a judgment "on the merits" sufficient to bar Walker's other claims in her current action. *Helms*, 986 N.E.2d at 308. As such, we conclude that at least one prong of claim preclusion was not satisfied for *res judicata* to apply entirely to Walker's small claims action. Based on *res judicata* grounds, we reverse the trial court's dismissal of Walker's complaint with respect to her claims not determined on the merits but affirm the trial court's holding that the habitability issue is barred by the principles of *res judicata*.

CONCLUSION

[20] For the reason stated, we conclude that Walker's habitability claim was barred by the principles of *res judicata,* but her other claims were not barred. Therefore, we partly reverse the trial court dismissal with respect to her other issues not settled on the merits and remand for further proceedings.

[21] Affirmed in part, reversed in part, and remanded for further proceedings in light of this opinion.

[22] Najam, J. concurs

[23] Brown, J. concurs with separate concurring opinion

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Brown, Judge, concurring.

I write separately as I would expressly clarify that, on remand, one claim remains, specifically, Takila Walker's claim as set forth in her complaint filed in the Superior Court of "voluntary acts against my health." *See* Appellees' Appendix Volume II at 17. In her appellant's brief, Walker argues the Superior Court "erred in dismissing [her] claim on *res judicata* because the proceedings demonstrate that [her] health issue was never canvassed *ab initio* for want of jurisdiction." Appellant's Brief at 5. Her brief further states "[w]hat is being addressed in this appeal *is the damage on the health* of [Walker] occasioned by the uninhabitable conditions in premises" and "[a] dismissal with prejudice is only applicable [to] matters that have been determined on merit, and [in] this appeal, [Walker's] *health damage* was not discussed on any merit or at all." *Id*. at 8

(emphases added). She makes no argument as to any other claims, and, accordingly, Walker has waived the viability of her other claims.

[24]