

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2014 CA 0169

FLOYD P. DONLEY, SR.

VERSUS

**TOWN OF AMITE CITY MAYOR AND COUNCIL,
TOWN ATTORNEY/TOWN MAGISTRATE
CHARLES MORGAN REID**

On Appeal from the 21st Judicial District Court
Parish of Tangipahoa, Louisiana
Docket No. 2013-0000925, Division "C"
Honorable Burrell J. Carter, Judge Ad Hoc Presiding

Floyd P. Donley, Sr.
Amite, LA

Plaintiff-Appellant
In Proper Person

Charles M. Reid
Amite, LA

Attorney for
Defendants-Appellees
Town of Amite, City Mayor and Council,
and Town Attorney/Town Magistrate-
Charles Morgan Reid

BEFORE: PARRO, McDONALD, AND CRAIN, JJ.

Judgment rendered DEC 23 2014

RHS
MM
RJ

PARRO, J.

Floyd P. Donley, Sr. appeals a judgment that dismissed, on the basis of res judicata, his suit for a declaratory judgment against the Town of Amite, Town Attorney/Town Magistrate Charles Morgan Reid, the Mayor, and the Town Council. We affirm the judgment. Mr. Donley also filed a motion to have this matter expedited, which we deny as moot.

BACKGROUND

This is the latest in a series of lawsuits filed by Mr. Donley, all of which are based on an incident that occurred on September 24, 2008, at the Dirt Cheap Store in Amite, Louisiana.¹ Mr. Donley, then 79 years old, was in the store taking photographs of things that he considered to be safety violations. Velma Hingle, the store manager, and Allan Spallinger, the security guard, asked Mr. Donley to leave, but he refused. In the ensuing confrontation, Ms. Hingle and Mr. Spallinger claimed Mr. Donley had struck them, which he denied. Store employees called an ambulance service for medical treatment for Ms. Hingle and called the Amite City Police to remove Mr. Donley from the store. In the meantime, Mr. Donley claimed he had slipped and fallen due to some oil on the floor; he also requested emergency medical treatment for chest pains, dizziness, and weakness. The police arrived, handcuffed Mr. Donley, and detained him at the store for questioning. The officers involved in the investigation were Allen Ordeneaux, III, Joey Phillips, and Sgt. Dominic Cuti. Both Ms. Hingle and Mr. Donley were taken by ambulance to a local hospital, after which the police released Mr. Donley to see his personal physician. Several days later, the City Attorney, Mr. Charles Morgan Reid, signed a warrant for Mr. Donley's arrest on two counts of misdemeanor simple battery on Ms. Hingle and Mr. Spallinger, violations of LSA-R.S. 14:35.

On November 5, 2008, Mr. Donley appeared in the Mayor's Court, which was presided over by Mr. Reid, who was also the Magistrate for the Mayor's Court. Mr. Donley argued that the Mayor's Court did not have jurisdiction over the case, because he had been arrested on a state criminal statute, and such cases could only be tried in

¹ The convenience store was owned by Hudson's Salvage, LLC.

district court. However, Magistrate Reid refused to transfer the case to the 21st Judicial District Court (21st JDC), and set a trial date for December 3, 2008. After that trial before Magistrate Reid in the Mayor's Court, Mr. Donley was found guilty of one count of simple battery on Ms. Hingle. He appealed his conviction to the 21st JDC. When no one appeared at trial on behalf of the City of Amite, the court dismissed the charges against Mr. Donley in a judgment signed October 7, 2009. Thus, Mr. Donley's conviction was overturned, and he was vindicated by the judgment of the 21st JDC. Case closed; Mr. Donley won.

But, not satisfied with this result, Mr. Donley proceeded to file a plethora of lawsuits against everyone involved in this incident and its aftermath. See Donley v. Ordeneaux, 09-6422, 2010 WL 2836115 (E.D. La. July 16, 2010) (unreported), aff'd, 419 Fed.Appx. 519 (C.A.5 (La.) 3/23/11), cert. denied, ___ U.S. ___, 132 S.Ct. 405, 181 L.Ed.2d 258 (2011) (suit against investigating and arresting officers); Donley v. Hudson's Salvage, LLC, 10-3223, 2011 WL 5930473 (E.D. La. November 29, 2011) (unreported), aff'd, 517 Fed.Appx. 216 (C.A.5 (La.) 2/20/13), cert. denied, ___ U.S. ___, 134 S.Ct. 281, 187 L.Ed.2d 203 (2013) (suit against owner of convenience store and its employees); Donley v. Reid, 10-1217, 2010 WL 5487149 (La. App. 1st Cir. 12/22/10) (unreported), writ denied, 11-0208 (La. 3/25/11), 61 So.3d 669, cert. denied, ___ U.S. ___, 132 S.Ct. 113, 181 L.Ed.2d 38 (2011) (suit against Amite City Attorney/Magistrate Reid); Donley v. Acadian Ambulance Svce., 11-1289, 2012 WL 992110 (La. App. 1st Cir. 3/23/12) (unreported) (suit against ambulance service that transported Mr. Donley to the hospital); Donley v. Hudson's Salvage, LLC., 10-1315, 2010 WL 5480438 (La. App. 1st Cir. 12/22/10) (unreported) (affirmed in part and remanded); Donley v. Hudson's Salvage, LLC, 13-1498, 2014 WL 1165867 (La. App. 1st Cir. 3/21/14) (unreported appeal after remand), writ denied, 14-0967 (La. 6/13/14), 140 So.3d 1193 (suit against owner of convenience store and its employees). In every case, Mr. Donley's claims were ultimately dismissed.²

Undeterred, Mr. Donley filed yet another lawsuit, which is the matter currently

² According to his petition in this case, Mr. Donley also filed a complaint against Mr. Reid with the Louisiana Judiciary Commission in May 2012. The current status of that complaint is unknown.

before this court on appeal. In it, he requested a declaration from the court that Mr. Reid was guilty of dual office holding, a violation of Louisiana's Dual Officeholding and Dual Employment Law, LSA-R.S. 42:61-66; violations of various provisions of the Louisiana and Federal constitutions; and violations of the "Canons of Judicial Procedure." Mr. Donley also claimed that the Town of Amite, acting through its mayor and the city council, had illegally appointed Mr. Reid to dual, conflicting, and biased offices, giving rise to tort damages, including all costs and legal expenses he had incurred.

The defendants filed a peremptory exception raising the objection of res judicata and a declinatory exception raising the objection of lis pendens. Mr. Donley opposed both exceptions. The exceptions were tried on August 20, 2013. The court found that Mr. Donley's current lawsuit asserted a cause of action arising out of the same occurrence that was the subject matter of the first and second actions filed by him in state court, as well as the action filed by him in federal court prior to this action. The court further found that the present action existed at the time of final judgment arising out of the prior litigation, and therefore, the prior judgments barred any subsequent litigation of those causes of action. The exception of res judicata was granted, and Mr. Donley's suit was dismissed at his costs in a judgment signed October 22, 2013.³ This appeal followed.

APPLICABLE LAW

It is implicit in the concept of a judicial system that controversies be finally resolved so that parties may enjoy their rights and so that conflicting legal obligations may not be imposed on an individual; litigation must end at some point. Precluding re-litigation prevents inefficient use of the courts' resources, reduces the possibility of harassment through vexatious suits, and helps maintain respect for the judicial proceedings by guarding against inconsistent decisions. Terrebonne Fuel & Lube, Inc. v. Placid Refining Co., 95-0654 (La. 1/16/96), 666 So.2d 624, 631 (citing Dixon, Booksh, Zimmering, Res Judicata in Louisiana since Hope v. Madison, 51 Tul.L.Rev. 611

³ Mr. Donley's motion for a new trial was denied on October 30, 2013.

(1977). Accordingly, all actions arising out of the same transaction or occurrence must be brought together or be subject to a plea of res judicata. See LSA-R.S. 13:4231; LSA-C.C.P. art. 425; James v. Formosa Plastics Corp. of Louisiana, 01-2056 (La. 4/3/02), 813 So.2d 335, 339.

The doctrine of res judicata is codified in LSA-R.S. 13:4231, which provides, in pertinent part:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

* * *

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The Louisiana Supreme Court has emphasized that all of the following elements must be satisfied in order for res judicata to preclude a second action: (1) the first judgment is valid and final; (2) the parties are the same; (3) the cause or causes of action asserted in the second suit existed at the time of the final judgment in the first litigation; and (4) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. Chevron U.S.A., Inc. v. State, 07-2469 (La. 9/8/08), 993 So.2d 187, 194. The doctrine of res judicata is not discretionary and mandates the effect to be given final judgments. Henkelmann v. Whiskey Island Preserve, LLC, 13-0180 (La. App. 1st Cir. 5/15/14), 145 So.3d 465, 469.

Prior litigation of an issue is not required in order for a cause of action to be barred by res judicata. Louisiana Code of Civil Procedure article 425 provides that a party "**shall** assert all causes of action arising out of the transaction or occurrence that is the subject matter of the litigation." (Emphasis added.) After a final judgment, res judicata bars relitigation of any subject matter arising from the same transaction or occurrence as a previous suit. See LSA-R.S. 13:4231; LSA-C.C.P. art. 425. Implicit in

the concept of res judicata is the principle that a party had the **opportunity** to raise a claim in the first adjudication, but failed to do so. Once a final judgment acquires res judicata status, no court has jurisdiction to change the judgment. Stroscher v. Stroscher, 01-2769 (La. App. 1st Cir. 2/14/03), 845 So.2d 518, 525; Nolan v. State, 13-2140 (La. App. 1st Cir. 6/6/14), 148 So.3d 198, 202-03 writ denied, 14-1795 (La. 11/14/14), 2014 WL 6655881, ___ So.3d ___.

Louisiana Revised Statute 13:4231 embraces the broad usage of the term "res judicata" to include both claim preclusion (res judicata) and issue preclusion (collateral estoppel). Under claim preclusion, a res judicata judgment on the merits precludes the parties from re-litigating matters that were or **could have been** raised in that action. Under issue preclusion, however, once a court decides an issue of fact or law necessary to its judgment, that decision precludes re-litigation of the same issue in a different cause of action between the same parties. Thus, res judicata used in the broad sense has two different aspects: a) foreclosure of litigating matters that have never been litigated but should have been advanced in the earlier suit; and b) foreclosure of re-litigating matters that have been previously litigated and decided. See Henkelmann, 145 So.3d at 470.

A claim that a prior adjudication was incorrect, because of an erroneous interpretation of law, or because of reliance on a legal principle later overruled, is immaterial to the application of res judicata in a following proceeding so long as the requirements of res judicata are met. Gardache v. City of New Orleans Police Dept., 07-2496 (La. 3/24/08), 977 So.2d 891, 892.

ANALYSIS

Applying the above legal precepts to the matter before us, our first inquiry is whether there is a prior final judgment between the same parties. There are several. The most obvious is Donley v. Reid, 10-1217, 2010 WL 5487149 (La. App. 1st Cir. 12/22/10) (unreported), writ denied, 11-0208 (La. 3/25/11), 61 So.3d 669, cert. denied, ___ U.S. ___, 132 S.Ct. 113, 181 L.Ed.2d 38 (2011) (Donley I). The lawsuit currently on appeal is between the same parties, Mr. Donley and Mr. Reid. Additionally,

the judgment in Donley I, finding that Mr. Donley had no cause of action against Mr. Reid because under LSA-R.S. 33:441(C)(2), he had judicial immunity for his official acts as presiding officer of the Mayor's Court, is valid and final. It was rendered by a court that had jurisdiction over the parties and the subject matter, and it decided the merits of the claims before it. The cause of action asserted in the matter before us, namely, that Mr. Reid's dual office holding illegally deprived Mr. Donley of various rights, existed at the time of the final judgment in Donley I. Finally, the cause of action against Mr. Reid in this suit arose out of the same occurrence that was the subject matter of Donley I. Therefore, as to Mr. Reid, this suit is barred by the doctrine of res judicata.

Another case also forms the basis of a finding of res judicata, namely Donley v. Hudson's Salvage, LLC, 10-3223, 2011 WL 5930473 (E.D. La. November 29, 2011) (unreported), aff'd, 517 Fed.Appx. 216 (C.A.5 (La.) 2/20/13), cert. denied, ___ U.S. ___, 134 S.Ct. 281, 187 L.Ed.2d 203 (2013) (Donley II). In that case, Mr. Donley added Mr. Reid, the Mayor of Amite, and the Amite City Council as defendants in an amended petition, alleging that the mayor and council had illegally appointed Reid, the City Attorney, to a position as a Magistrate of the Mayor's Court. The court stated:

I find, as a matter of law, that the three prior judgments against Donley preclude all of his federal and state law claims in the instant lawsuit against the Amite Defendants who were previously sued, namely Ordeneaux, Phillips, Cuti, Trabona, Simmons and **Reid**, and against the Hudson's Defendants who were previously sued, namely, Hudson's Salvage, Cox, Hingle, Spallinger, Peltier and Holifield. As to these defendants, the parties in the prior and the instant actions are identical; a court of competent jurisdiction rendered a valid final judgment on the merits in the prior cases; the same claims and causes of action are involved in the previous and the instant lawsuits; and Donley's current complaint asserts causes of action that arise out of the same transactions and occurrences that were the subject matter of the prior actions. Thus, all of the elements of claim preclusion under federal and Louisiana law are met as to Donley's claims that mirror the claims in his prior lawsuits against these same defendants.

Furthermore, all of Donley's claims against these defendants that he *could have raised* in his prior lawsuits, but did not, are barred by claim preclusion. Under both federal and Louisiana law, all of plaintiff's causes of action that existed at the time of the prior judgments and that arose out of the same transactions or occurrences are extinguished and barred from relitigation. (Emphasis added).

Donley II, 2011 WL 5930473, *12. The court further found that the interests of Mayor Goldsby and the Amite City Council were adequately represented by the defendants in

Donley's prior lawsuit in the same court, since the claims against the previous defendants were so closely aligned to their interests as to make the previous defendants their virtual representatives. Donley II, 2011 WL 5930473, *16.

In the case before us, the defendants include the Town of Amite, its mayor, and its city council, all of whom are charged with illegally appointing Mr. Reid to his two offices as city attorney and magistrate of the Mayor's court. The Town of Amite can only act through its representatives. Therefore, its interests are fully represented by the mayor and city council, who were also parties in Donley II. A final judgment on the merits was rendered in Donley II by a federal court with jurisdiction over the parties and the subject matter. The causes of action asserted in the matter before us, namely, the dual office holding of Mr. Reid and the mayor's and city council's alleged fault in appointing him to two positions, existed at the time of the judgment in Donley II, and formed the basis of the claims brought against the town, the mayor, and the council. Finally, the claims in this matter arose out of the same transaction or occurrence that was the basis of the claims against all the parties in Donley II. Those claims were barred by res judicata, and any other claims that could have been brought by Mr. Donley against these same parties arising out of this incident, were also barred. Therefore, the case before us never should have been brought, and is itself barred by res judicata.

Under the doctrine of res judicata, it does not matter if any of these judgments were manifestly erroneous or tinged by an error or errors of law. Each has the authority of having been adjudicated to a valid and final judgment and cannot be re-litigated. Yet, Mr. Donley continues to re-litigate, disregarding the previous judgments of res judicata involving these same parties and the same incident. Every conceivable party who may have been involved in that incident has been sued, most of them several times and in several courts. Every claim against them existed at the time that previous judgments were rendered in courts with authority over the parties and the subject matter. And every claim arises out of the same incident. Whether a particular claim was brought is immaterial, since Mr. Donley had the opportunity to raise every

imaginable claim in one or more of the prior lawsuits. Therefore, any further allegations or demands arising out of the September 24, 2008 incident at the Dirt Cheap Store in Amite, Louisiana, are forever barred and cannot be re-litigated. See Johnson v. University Medical Center in Lafayette, 13-0040 (La. 3/15/13), 109 So.3d 347, 349. Should another such lawsuit reach this court, even though Mr. Donley is pro se in these lawsuits, we will not hesitate to impose sanctions upon him for filing a frivolous appeal.

CONCLUSION

The October 22, 2013 judgment, dismissing Mr. Donley's suit at his costs on the basis of res judicata, is affirmed. All costs of this appeal are assessed against Mr. Donley.

AFFIRMED; MOTION DENIED.