

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 0247

**CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE AND
THE DEPARTMENT OF PUBLIC WORKS**

VERSUS

**ANTHONY DOUGLAS AND THE PERSONNEL BOARD OF THE
CITY OF BATON ROUGE, PARISH OF EAST BATON ROUGE**

Judgment Rendered: **SEP 21 2018**

**Appealed from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Case No. C466636**

The Honorable Donald R. Johnson, Judge Presiding

**Anthony W. Douglas
Baton Rouge, Louisiana**

**Plaintiff/Appellant
Pro Se**

**Lea Anne Batson
Parish Attorney
Candace B. Ford
Assistant Parish Attorney
Baton Rouge, Louisiana**

**Counsel for Defendant/Appellee
City of Baton Rouge, Parish of East
Baton Rouge, Department of Public
Works**

BEFORE: GUIDRY, THERIOT, AND PENZATO, JJ.

*MT.
Fry
ahp*

THERIOT, J.

Anthony W. Douglas appeals the judgment of the Nineteenth Judicial District Court granting the exception of res judicata filed by the City of Baton Rouge/Parish of East Baton Rouge Department of Public Works and dismissing with prejudice Anthony Douglas's petition to annul judgment. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

This is the sixth appeal in this employment dispute between Anthony W. Douglas ("Mr. Douglas") and the City of Baton Rouge/Parish of East Baton Rouge Department of Public Works ("the City/Parish"). The appeal history is as follows:

City of Baton Rouge v. Douglas (hereinafter referred to as *Douglas I*), 2000-1736 (La. App. 1 Cir. 9/28/01); 800 So.2d 448 (unpublished), *writ denied*, 2001-2806 (La. 11/9/01); 801 So.2d 1066, *overruled by City of Baton Rouge v. Douglas* (hereinafter referred to as *Douglas II*), 2004-1448 (La. App. 1 Cir. 12/29/05); 923 So.2d 166 (*en banc*), *writ denied*, 2006-0675 (La. 6/2/06); 929 So.2d 1254, *enforcement denied*, 2006-0675 (La. 11/4/11); 75 So.3d 912, *writs denied*, 2011-0328 (La. 4/1/11); 60 So.3d 1255, 2006-0675 (La. 12/16/11); 76 So.3d 1189;

City of Baton Rouge v. Douglas (hereinafter referred to as *Douglas III*), 2007-1153 (La. App. 1 Cir. 2/8/08); 984 So.2d 746, *writ denied*, 2008-0939 (La. 6/20/08); 983 So.2d 1284;

City of Baton Rouge v. Douglas (hereinafter referred to as *Douglas IV*), 2011-2061, 2011-2062 (La. App. 1 Cir. 6/8/12); 2012 WL 2061419 (unpublished), *writ denied*, 2012-1575 (La. 10/12/12); 98 So.3d 875; and

City of Baton Rouge v. Douglas (hereinafter referred to as *Douglas V*), 2016-0655 (La. App. 1 Cir. 4/12/17); 218 So.3d 158.

Mr. Douglas is a former classified civil service employee for the City/Parish. In 1999, Mr. Douglas was terminated from his employment with the City/Parish. After two appeals regarding the validity of his termination, Mr. Douglas was reinstated to his employment. In January 2007, Mr. Douglas underwent a physical examination and drug/alcohol screening in connection with his reinstatement, but failed the drug screening. The City/Parish subsequently attempted to terminate Mr. Douglas, which Mr. Douglas disputed. On March 9, 2007, the parties and their attorneys engaged in a settlement conference with the trial court, after which a settlement agreement was entered into on the record in open court.

Under the terms of the settlement agreement, the City/Parish agreed to pay back wages, severance, and retirement contributions to Mr. Douglas. In return, Mr. Douglas agreed to release the City/Parish from all possible pending claims, to retire from the City/Parish employment, and to never seek or accept re-employment with the City Parish. Mr. Douglas received and kept the City/Parish's payment, but refused to retire.

On March 22, 2007, Mr. Douglas sent a letter to all involved parties stating that he had accepted the settlement under duress and that he no longer wished to accept the settlement agreement. On March 28, 2007, the City/Parish filed a motion to enforce the settlement agreement. On April 30, 2007, following an April 23, 2007 hearing, the trial court signed a judgment ordering Mr. Douglas to execute all documents and take all actions necessary to consummate the settlement agreement, including applying for retirement, signing all release documents, processing all checks, and honoring an attorney's lien of \$78,699.52.

Although Mr. Douglas signed the settlement agreement, he included the notation "signed pursuant to court order." Mr. Douglas also filed a

document entitled “Disagreement With Settlement and Receipt Release” in which he stated that he was signing the agreement “in total protest and duress, in fear of being held in contempt of court and being jailed.” Mr. Douglas then appealed the trial court’s judgment, arguing that his consent was vitiated by duress, the settlement was against public policy, and he did not feel the settlement was fair or equitable to him. *Douglas III*, 984 So.2d 746. This court heard the appeal and, after reviewing the merits, found that the March 9, 2007 stipulation was a valid compromise. *Id.*

On December 18, 2008, Mr. Douglas filed a petition in the trial court seeking to recognize the absolute nullity of the April 30, 2007 judgment and the settlement agreement that Mr. Douglas executed pursuant to the April 30, 2007 judgment. On March 4, 2011, the trial court signed a judgment granting exceptions of res judicata and no cause of action filed by the City/Parish. On appeal, this court found that Mr. Douglas was attempting to relitigate the validity of the compromise agreement and the April 30, 2007 judgment ordering him to consummate the settlement agreement. *Douglas IV*, at *2.

On January 6, 2015, Mr. Douglas filed a petition for a writ of mandamus in the trial court seeking to be reinstated to his former employment plus back pay and damages. On April 2, 2015, the trial court signed a judgment dismissing the petition.

The petition to annul the April 30, 2007 judgment, which is at issue in this appeal, was filed on January 19, 2016. Mr. Douglas amended the petition on March 14, 2016. On April 14, 2016, the City/Parish filed an exception of res judicata in response to Mr. Douglas’s petition to annul judgment.

On July 11, 2016, Mr. Douglas filed a motion for contempt of court, remand, and vacate with this court. On September 9, 2016, Mr. Douglas filed a second motion for contempt of court and to strike and vacate. On October 31, 2016, this court denied the September 9, 2016 motion. *Douglas V*, 218 So.3d at 164. Further, on April 12, 2017, this court denied the July 11, 2016 motion. *Id.* at 167. This court also affirmed the trial court's refusal to grant the writ of mandamus.

On May 12, 2017, Mr. Douglas filed a motion to strike, seeking to have all judgments since March 9, 2007 in favor of the City/Parish stricken from the court's records. On the same date, Mr. Douglas filed a motion of contempt, seeking to have the City/Parish held in contempt for giving false testimony and maintaining false public records. On August 7, 2017, the trial court signed a judgment denying both motions.

Mr. Douglas filed a memorandum in support of his petition to annul judgment on October 13, 2017. On October 20, 2017, the City/Parish re-filed its exception of res judicata. On November 15, 2017, the trial court granted the City/Parish's exception of res judicata and dismissed with prejudice Mr. Douglas's petition to annul judgment. In its written reasons for judgment, the trial court stated that the matter was precluded per the April 30, 2007 judgment, which entered the terms of the Settlement into the record. The trial court further noted that an exception of res judicata had already been granted on March 1, 2011. This appeal followed.

ASSIGNMENTS OF ERROR

Appellant assigns the following as error.

- (1) Res [j]udicata [does] not bar an action for nullity of judgment pursuant to La. C. C. P. art[.] 2004.
- (2) Res judicata [does] not bar an action for nullity of judgment pursuant to La. C. C. P. art. 2002.

STANDARD OF REVIEW

The peremptory exception raising the objection of res judicata is based on the conclusive legal presumption that there should be no re-litigation of a thing previously adjudged between the same parties. *Cepriano v. B Square Builders, L.L.C.*, 2014-1568 (La. App. 1 Cir. 4/24/15); 170 So.3d 1043, 1047. Although the exception of res judicata typically contemplates the existence of a final judgment on the merits, it also applies where there is a transaction or settlement of a dispute that has been entered into by the parties. *Id.* The burden of proving the facts essential to sustaining the objection is on the party pleading the objection. *Id.* When an objection of res judicata is raised before the case is submitted and evidence is received on the objection, the standard of review on appeal is traditionally manifest error with regard to factual findings of the trial court. *Id.* However, the res judicata effect of a prior judgment is a question of law that is reviewed *de novo* on appeal. *Id.* Because there are several prior judgments in this case, the proper standard of review is *de novo*.

DISCUSSION

Assignment of Error #1

In his first assignment of error, Mr. Douglas argues that res judicata does not bar an action for nullity of judgment pursuant to La. Code Civ. P. art. 2004, which states in pertinent part that “[a] final judgment obtained by fraud or ill practices may be annulled.” Mr. Douglas argues throughout his brief that he, as a civil service employee, is entitled to certain procedural due process – namely, notice and an opportunity to be heard.¹ According to Mr.

¹ Mr. Douglas refers to Section 9.05 of the City of Baton Rouge and Parish of East Baton Rouge’s Plan of Government, which states in pertinent part: “No member of the Classified Service shall be suspended for more than thirty days, reduced in rank or pay, or removed, except after **notice in writing of the grounds of the proposed disciplinary action and an opportunity to be heard** thereon by the Personnel Board at a hearing which may be public at his option, and at which he may be represented by counsel, to be held not

Douglas, the City/Parish fraudulently claimed that Mr. Douglas had received notice and an opportunity to be heard prior to being ordered to comply with the March 9, 2007 settlement agreement. Mr. Douglas argues that because of these alleged fraudulent statements, the judgment ordering him to comply with the settlement should be annulled.

Mr. Douglas's argument regarding notice and an opportunity to be heard is the same as the arguments that he made in *Douglas V*. In *Douglas V*, this court stated that there was no evidence to support Mr. Douglas's assertion that he had not been afforded notice and an opportunity to be heard before the City/Parish Personnel Board. *City of Baton Rouge v. Douglas (Douglas V)*, 218 So.3d at 166. This court further stated that:

It appears that Mr. Douglas is again attempting to relitigate the validity of the settlement agreement and the April 30, 2007 judgment by arguing the City/Parish, as well as the judge, engaged in contempt of court. In *Douglas III and IV*, this court affirmed the validity of the settlement agreement and the April 30, 2007 judgment ordering Mr. Douglas to consummate the settlement agreement. Those rulings are now the law of the case, and we will not revisit them.

Id. Accordingly, this court has already found there to be no merit in Mr. Douglas's allegations that the City/Parish had made fraudulent statements regarding Mr. Douglas's right to notice and an opportunity to be heard. He has not presented any additional evidence to support his claims. As such, we refuse to relitigate this issue. This assignment of error lacks merit.

Assignment of Error #2

In his second assignment of error, Mr. Douglas argues that res judicata does not bar an action for nullity of judgment pursuant to La. Code Civ. P. art. 2002. Louisiana Code of Civil Procedure article 2002 states in pertinent part that “[a] final judgment shall be annulled if it is rendered . . .

less than ten nor more than sixty days after the service of such notice at a time to be specified therein.” (Emphasis added.)

[b]y a court which does not have jurisdiction over the subject matter of the suit.” Mr. Douglas argues that neither the trial court nor the appellate court had jurisdiction over the disciplinary action between Mr. Douglas and the City/Parish, and thus did not have jurisdiction to order Mr. Douglas to sign the settlement agreement.

Subject matter jurisdiction is the legal power and authority of a court to hear and determine a particular class of actions or proceedings, based upon the object of the demand, the amount in dispute, or the value of the right asserted. La. Code Civ. P. art. 2. A judgment rendered by a court which has no jurisdiction over the subject matter of the action or proceeding is void. La. Code Civ. P. art. 3. A court of appeal has appellate jurisdiction over civil matters. La. Const. art. 5, § 10. Additionally, a court of appeal has supervisory jurisdiction over cases which arise within its circuit. *Id.*

Prior to the employment dispute, Mr. Douglas was a classified civil service employee of the City/Parish. The City of Baton Rouge and Parish of East Baton Rouge’s Plan of Government (“Plan of Government”) gives the Personnel Board of the City of Baton Rouge (“Personnel Board”) the power to make recommendations regarding the conditions of employment of Classified Service employees.² After the Personnel Board makes a decision regarding a disciplinary action against a Classified Service member, that decision may be appealed to the Nineteenth Judicial District Court.³

² Section 9.04(c) of the City of Baton Rouge and Parish of East Baton Rouge’s Plan of Government (“Plan of Government”) provides that the Personnel Board (“Personnel Board”) has the power and is required to “[m]ake recommendations to the Personnel Administrator to [i]nvestigate any or all matters relating to conditions of employment in all departments, offices and agencies in which members of the Classified Service are employed[.]”

³ Section 9.05 of the Plan of Government provides in part that “[t]he decision of the Personnel Board either sustaining, reversing or modifying the disciplinary action against a Classified Service member may be appealed by such Classified Service member or the applicable department head to the Nineteenth Judicial District Court within sixty (60) calendar days from the appealing party’s receipt of notice of the Personnel Board’s decision.”

As required by the Plan of Government, Mr. Douglas's original appeal in 1999 was made to the Personnel Board. Following a hearing, the Personnel Board reinstated Mr. Douglas to his position. The City/Parish appealed the Personnel Board's decision to the trial court, which affirmed the reinstatement. The City/Parish then appealed to this court, which reversed the trial court's decision and ordered Mr. Douglas's termination.

Mr. Douglas subsequently petitioned the trial court for a writ of mandamus ordering the City/Parish to reinstate his employment, contending that both the trial court and this court lacked subject matter jurisdiction over the appeal the City/Parish had taken in his case and therefore the ensuing court decisions were null and void. Mr. Douglas based this argument on *City of Baton Rouge v. Bernard*, 2001-2468 (La. App. 1 Cir. 1/22/03); 840 So.2d 4, 5-7, in which this court held that neither the trial court nor this court had subject matter jurisdiction over the Personnel Board's decision to terminate an employee. The trial court agreed with Mr. Douglas and issued a writ of mandamus ordering that Mr. Douglas be returned to his employment with the City/Parish pursuant to the decision of the Personnel Board from which the original appeal was taken. This court subsequently affirmed the trial court's decision, thereby reinstating Mr. Douglas to his job, and reiterated the holding of *City of Baton Rouge v. Bernard*.

Following Mr. Douglas's reinstatement and drug test results, Mr. Douglas filed a motion for settlement conference with the trial court, requesting that the trial court preside over a settlement conference with all parties. A settlement was ultimately reached, the trial court granted the City/Parish's motion to enforce the settlement agreement, and this court affirmed, finding the settlement agreement to be a valid compromise. *Douglas III*, 984 So.2d 746.

Mr. Douglas argues on appeal that neither the trial court nor the appellate court had jurisdiction over the disciplinary action between himself and the City/Parish, and thus did not have jurisdiction to order him to sign the settlement agreement. The jurisdictional issues in *Douglas I* were resolved in *Douglas II*, and Mr. Douglas was reinstated to his position. However, following the results of the drug test, Mr. Douglas filed a motion for settlement conference with the trial court and reached a settlement agreement with the City/Parish. Thus, although the original disciplinary action was heard by the Personnel Board, the settlement agreement and all other issues between Mr. Douglas and the City/Parish were properly heard by the trial court. Upon appeal, this court, pursuant to its appellate jurisdiction authorized by La. Const. art. 5, § 10, properly reviewed the April 30, 2007 judgment ordering Mr. Douglas to comply. See *Douglas III*, 984 So.2d 746. Accordingly, there are no jurisdictional issues in either the trial court or this court's judgments. This assignment of error lacks merit.

DECREE

For the above and foregoing reasons, the judgment of the Nineteenth Judicial Court is affirmed. Costs of this appeal are assessed to Appellant, Anthony W. Douglas.