STATE OF MICHIGAN

COURT OF APPEALS

MANH TRAN,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY SCHOOL OF MEDICINE,

Defendant-Appellee.

UNPUBLISHED
October 5, 1999

No. 208892
Wayne Circuit Court
LC No. 97-717875 CK

Before: Gribbs, P.J., and O'Connell and R.B. Burns,* JJ.

PER CURIAM.

Plaintiff, a former medical student, commenced this action after his dismissal from defendant medical school, alleging three counts: (1) breach of contract; (2) racial discrimination under the Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*; and (3) wrongful discharge. The wrongful discharge claim was premised on an alleged violation of § 2402 of the Civil Rights Act, MCL 37.2402; MSA 3.548(402). Defendant moved for summary disposition, alleging that plaintiff had filed a similar action in federal court, which was dismissed, and that the present action was therefore barred by either res judicata or collateral estoppel. The trial court granted defendant's motion. Plaintiff now appeals as of right. We affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Baker v Arbor Drugs, Inc,* 215 Mich App 198, 202; 544 NW2d 727 (1996). Summary disposition under MCR 2.116(C)(7) is proper when the action is barred due to the disposition of the claim before commencement of the action, such as collateral estoppel or res judicata. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). The standard applicable to a motion under MCR 2.116(C)(7) is as follows:

> A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3);

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

When a party claims that the other side is collaterally estopped from raising an issue or that res judicata applies, the question is one of law for the trial court and this Court reviews that decision under the de novo standard. *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998); *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996).

Collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior action. *Horn, supra* at 62. The issue to be concluded must be the same in the second case as in the first proceeding. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). Furthermore, the doctrine requires that the same parties must have had a full opportunity to litigate the issue in the prior proceeding, and there must be mutuality of estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995). Collateral estoppel will not apply where the issues are merely similar. They must be identical. *Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994).

Res judicata bars a subsequent suit between the same parties when the evidence or essential facts remain the same. *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215; 561 NW2d 854 (1997). In order for res judicata to apply, (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former action, and (3) both actions must involve the same parties or their privies. *Id*. at 215-216.

The doctrine of res judicata is applied broadly. *Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54, 57; 554 NW2d 17 (1996). The purpose behind the doctrine is to prevent a party from refiling cases when a decision has been issued on the merits. Interminable litigation not only creates problems for the litigants involved, but results in an inefficient use of judicial time. *ABB Paint Finishing, Inc v Nat'l Union Fire Ins Co of Pittsburgh, PA*, 223 Mich App 559, 562; 567 NW2d 456 (1997).

Plaintiff's prior federal action, like the present action, alleged claims for breach of contract and racial discrimination. The essential facts underlying both actions are identical. Because the federal court dismissed the prior action for lack of merit, the trial court in this case properly determined that plaintiff's state action was barred by collateral estoppel.

Furthermore, to the extent that plaintiff's claims in this case are dissimilar to those alleged in the federal action, res judicata applies to bar the claims. The federal court allowed plaintiff to include all state claims in his federal action under its pendent jurisdiction. As a general rule, res judicata will apply to bar subsequent litigation based on the same transaction or events, regardless whether the subsequent

litigation is pursued in a federal or a state forum. *Pierson Sand and Gravel, Inc. v Keeler Brass Co*, ___ Mich ___; ___ NW2d ___ (1999)(Nos. 108729, 108730, issued 7-8-99), slip op at 8. Thus, res judicata bars the present action because plaintiff should have included all claims, state and federal, in the prior action that arose out of this same transaction or series of events. *Carter v Southeastern Michigan Transportation Authority*, 135 Mich App 261, 264; 351 NW2d 920 (1984); *Brownridge v Michigan Mut Ins Co*, 115 Mich App 745; 321 NW2d 798 (1982). See also *Bergeron v Busch*, 228 Mich App 618, 622-628; 579 NW2d 124 (1998), held in abeyance pending *Pierson, supra*.

Plaintiff also argues that res judicata or collateral estoppel should not apply in this matter because he represented himself in the federal proceeding and did not properly present his case to the federal court. He therefore contends that his federal action was not dismissed on the merits. We find no merit to this argument. It is clear that the federal court considered the merits of plaintiff's case. The fact that plaintiff chose to represent himself in the federal matter does not prevent res judicata or collateral estoppel from applying to this proceeding. *Carter*, *supra* at 265-266.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns