STATE OF MICHIGAN

COURT OF APPEALS

HELENE RAUCH, M.D./Ph.D.,

Plaintiff-Appellant,

v

SINAI HOSPITAL,

Defendant-Appellee.

UNPUBLISHED
June 15, 2001

No. 218576
Wayne Circuit Court
LC No. 97-727793-CZ

Before: Bandstra, C.J., and Griffin and Collins, JJ.

PER CURIAM.

Plaintiff Helene Rauch appeals as of right from the trial court's order granting defendant summary disposition pursuant to MCR 2.116(C)(7). We affirm.

This matter finds its genesis in a dispute which originally developed between plaintiff and her employer, Wayne State University, during the late 1980's and early 1990's. Plaintiff has, since 1975, been employed by the university's medical school as an associate professor in its immunology and microbiology department. During the latter half of the 1980's, plaintiff was granted a leave of absence to attend medical school and, as part of her medical education, participated in a psychiatric residency program at defendant Sinai Hospital for a two-year period beginning in 1991. In June 1993, however, the hospital denied plaintiff admission into the third year of the four-year residency program after the university refused her request for additional leave. Plaintiff subsequently filed suit against the university alleging, among other things, age discrimination under the state Civil Rights Act, MCL 37.2101 *et seq.*

During the pendency of her suit against the university, plaintiff sought readmission to the residency program. She was denied readmission despite her insistence that the university's unwillingness to accommodate her needs was discriminatory, and that the hospital's refusal to allow her to continue in the program without the university's approval served to further that discrimination.

In March 1996 plaintiff was awarded a substantial jury verdict against the university, and in May of that same year again requested readmission into the residency program. After being informed by the hospital that she would not be accepted into the program at that time, plaintiff, on June 28, 1996, filed suit against the hospital alleging that in refusing to readmit her into the residency program, it was aiding and abetting the university's discrimination in violation of

section 701 of the Civil Rights Act, MCL 37.2701(b). Plaintiff further alleged that the hospital breached certain of its own contractually binding policies when it initially removed her from the program in 1993, and sought both damages and an injunction prohibiting the hospital from refusing to allow her to continue in the program.

On April 14, 1997, the trial court dismissed plaintiff's civil rights claim after finding no evidence to show that the hospital had acted in a discriminatory manner in denying plaintiff readmission to its residency program. However, while plaintiff sought reconsideration of the trial court's decision, the parties proceeded to mediation of her breach of contract claim and on May 19, 1997, mutually accepted an award of $35,000. Shortly thereafter, plaintiff again sought readmission into the residency program, which the hospital denied in a letter dated June 20, 1997.

On August 18, 1997, the trial court denied reconsideration of its decision to dismiss plaintiff's civil rights claim and formally dismissed the case with prejudice on September 26, 1997. Shortly before dismissal of that suit, however, plaintiff, on September 3, 1997, filed a second action in which she alleged that the hospital's June 20, 1997 decision to deny her readmittance into its residency program constituted impermissible retaliation for her bringing suit against the hospital in June 1996. See MCL 37.2701(a). In bringing this second action, plaintiff again sought to enjoin the hospital from further refusing to allow her to continue in the program. However, finding that the principles of res judicata barred the action, the trial court dismissed the suit under MCR 2.116(C)(7).

On appeal, plaintiff asserts that the trial court erred in applying res judicata to the facts of this case. We review applications of res judicata, as well as decisions regarding motions for summary disposition, de novo as questions of law. *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

Under the doctrine of res judicata, "a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." *Wayne County v City of Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998), quoting Black's Law Dictionary (6th ed, 1990), p 1305. The doctrine operates where the earlier and subsequent actions involve the same parties or their privies, the matters in dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits. *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997).

In this case, plaintiff contests only the second requirement for application of the doctrine, which focuses on whether the issues in the second action could have been resolved in the prior action. *Id*. at 215. Plaintiff argues that because her earlier suit against the hospital involved only the hospital's conduct during the period between 1993 and 1996, whereas the instant matter concerns its actions since the filing of that suit, the claim presently at issue could not have been resolved previously, as it concerns facts not in existence at the time of her original suit against the hospital.

However, while we do not dispute that there are additional facts to be considered in the later suit, we find that the matter disputed in this latter action – plaintiff's reentry into the hospital's residency program – clearly could have been litigated in the first action, and that consequently res judicata applies to bar plaintiff's latest claim. In reaching this conclusion we are aware that generally, if different facts or proofs would be required to resolve a second action, res judicata does not apply. See *VanDeventer v Michigan Nat'l Ban*k, 172 Mich App 456, 464; 432 NW2d 338 (1988). However, we find that because plaintiff merely seeks to present another scenario for readmission into the hospital's residency program, the present case does not involve facts and events sufficiently separate from those involved in the 1996 dispute to bar application of the doctrine in this case. In support of this conclusion we note that a contrary holding would be inconsistent with the broad view of res judicata which has been adopted by our Supreme Court, see *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 160-163; 294 NW2d 165 (1980), as well as the policies of judicial economy and finality of litigation underlying the doctrine. *Id*. at 159; see also *Schwartz v City of Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991) ("[t]he doctrine of res judicata is a manifestation of the recognition that interminable litigation leads to vexation, confusion, and chaos for the litigants, resulting in inefficient use of judicial time").

As observed by this Court in *Jones v State Farm Mutual Auto Ins Co*, 202 Mich App 393, 397; 509 NW2d 829 (1993), the broad theory of res judicata employed in this jurisdiction recognizes that when a valid final judgment extinguishes a plaintiff's claim, "the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of transactions, out of which the action arose." *Id*., quoting 1 Restatement Judgments, 2d, § 24, p 196.

Although recognizing the difficulty in defining the appropriate factual scenario for application of this rule, the Restatement of Judgments, relied on by the panel in *Jones*, *supra*, directs that a "pragmatic" approach be taken, with particular attention to be paid to whether "a natural grouping or common nucleus of operative facts" exists between the actions. Restatement, § 24, comment b, pp 198-199. With respect to the factors most relevant to this determination, the Restatement offers the following guidance:

> Among the factors relevant to a determination whether the facts are so woven together as to constitute a single claim are their relatedness in time, space, origin, or motivation, and whether, taken together, they form a convenient unit for trial purposes. Though no single factor is determinative, the relevance of trial convenience makes it appropriate to ask how far the witnesses or proofs in the second action would tend to overlap the witnesses or proofs relevant to the first. If there is a substantial overlap, the second action should ordinarily be held precluded. [*Id*., p 199.]

We find the Restatement's position in this regard to be consistent with our Supreme Court's broad approach to claim preclusion, *Gose*, *supra* at 160-163, and thus applicable in this case.

It is without question that the witnesses and proofs necessary to both actions at issue here substantially overlap. Indeed, a cursory examination of the two complaints demonstrates that both actions arise from of the same core facts – the hospital's repeated refusal to allow plaintiff to continue in the residency program following her 1993 dispute with the university.

Additionally, there can be little doubt that had the additional facts upon which plaintiff's second action is based been presented as part of the first, the sum total would have been a more convenient package for resolution of the factual questions presented in both actions.[1]

In the first action, however, plaintiff chose to accept mediation as to her claim that the hospital had breached its own policies in removing her from the program and, although aware of the hospital's June 1997 refusal to admit her into the residency program well before the trial court dismissed the earlier action, chose not to seek amendment of the 1996 complaint, or otherwise appeal the trial court's decision, until after the court had dismissed the second action.[2] Plaintiff's voluntary choice of timing cannot be permitted to subvert the strong policies underlying the doctrine of res judicata. *Id*. at 159; *Schwartz*, *supra*.

Accordingly, we find that res judicata bars plaintiff from attempting to again litigate the issue whether she is entitled to readmission into the program, and that therefore the trial court did not err in dismissing plaintiff's later action under MCR 2.116(C)(7).

We affirm.

/s/ Richard A. Bandstra
/s/ Richard Allen Griffin
/s/ Jeffrey G. Collins

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[1] Although plaintiff ultimately sought relief from the judgment in the first action so that she could amend the earlier complaint to include her later claim of retaliation, we find her efforts insufficient to displace the strong policies underlying the doctrine of res judicata. *Gose*, *supra* at 159. Plaintiff had been aware of the hospital's refusal to grant her reentry into the program for more than four months before entry of the final order dismissing her first action. See *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999) (observing that res judicata bars "not only claims already litigated, but every claim arising from the same transaction that the parties, *exercising reasonable diligence*, could have raised but did not" (Emphasis added)).

[2] In making this observation we do not suggest that, as argued by defendant, plaintiff was required to seek such amendment under MCR 2.203(A), which requires a party to join every claim that the pleader has against the opposing party. Although consistent with res judicata principles, MCR 2.203(A) by its own language applies only to those claims which exist "at the time of serving the pleading. . . ." Here, as noted above, we do not dispute that the second action involves certain facts not in existence at the time the original suit was filed, i.e., the hospital's June 20, 1997 refusal to admit plaintiff into the residency program. Nonetheless, we believe that given the nature of the remedy sought in both suits, the broader policy considerations underlying the doctrine of res judicata apply to bar this later action.