

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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REGGIE L. TURNER,

Plaintiff-Appellant/Cross-Appellee,

v

AUTOALLIANCE INTERNATIONAL, INC.,

Defendant-Appellee/Cross-  
Appellant.

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UNPUBLISHED

November 19, 2002

No. 233185

Wayne Circuit Court

LC No. 99-907577-CZ

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Plaintiff, Reggie L. Turner, appeals as of right from the trial court's grant of summary disposition to defendant, AutoAlliance International, Inc. We affirm.

I. Facts and Procedural History

Plaintiff began working as an assembly line worker in defendant's Flat Rock plant in April 1989. Plaintiff worked under a collective bargaining agreement negotiated between defendant and United Auto Workers. After plaintiff sustained an injury at work in 1992, defendant voluntarily paid long-term disability (LTD) benefits until May 1996. At that time, on the basis of medical evaluations, defendant notified plaintiff that he should return to work. In October or November 1996, pursuant to the terms of the collective bargaining agreement, defendant terminated plaintiff for failing to return to work within five days of the expiration of his LTD benefits. Thereafter, a magistrate granted defendant an open award of workers' compensation benefits and the Worker's Compensation Appellate Commission affirmed a magistrate's decision.

On December 11, 1996, plaintiff filed a complaint in Wayne Circuit Court and alleged that defendant discriminated against him for filing a workers' compensation claim by failing to return him to work in violation of MCL 418.301(11).<sup>1</sup> The trial court granted defendant's motion for summary disposition and specifically held that plaintiff's statutory claim must be

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<sup>1</sup> At the time, plaintiff was also pursuing claims through the grievance process dictated under the collective bargaining agreement.

pursued under the terms of the collective bargaining agreement. Plaintiff filed a timely appeal of the trial court's decision, but later filed a motion to dismiss his appeal.

Thereafter, plaintiff filed a second complaint in Wayne Circuit Court and alleged the same claim under MCL 418.301(11) and added a discrimination claim under the Michigan Handicapper's Civil Rights Act. The trial court again granted defendant's motion for summary disposition. Plaintiff filed another appeal which this Court later dismissed. The arbitrator issued her opinion on January 15, 1999, while plaintiff's second appeal was pending. The arbitrator ruled that defendant did not violate the collective bargaining agreement by terminating plaintiff and that there was "no evidence of bias or discrimination against Mr. Turner." Plaintiff filed a third complaint against defendant in Wayne Circuit Court on March 15, 1999. Plaintiff asserted the same allegations as in his prior complaint. The trial court ultimately granted summary disposition to defendant on both of plaintiff's claims and plaintiff now appeals those orders.

## II. Analysis

We agree with defendant that we need not address the substance of plaintiff's workers' compensation retaliation claim because plaintiff voluntarily dismissed his appeal of this issue in 1997.

The trial court granted summary disposition to defendant on his workers' compensation retaliation claim on May 23, 1997. Notwithstanding plaintiff's argument that his workers' compensation retaliation claim is a state statutory claim that is not subject to arbitration under the collective bargaining agreement, the trial court specifically ruled to the contrary. While a dismissal without prejudice is generally not a "final judgment," here, the trial court's decision constituted a "final judgment" for appellate purposes under MCR 7.202(7)(a)(i) because it was "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties . . . ." Indeed, the trial court granted summary disposition to defendant not merely because he failed to exhaust his administrative remedies, but because it ruled that plaintiff's workers' compensation retaliation claim is barred as a matter of law as one that must be resolved through arbitration under the collective bargaining agreement. MCR 2.116(C)(7). Plaintiff did not add the issue to his arbitration claim as directed by the trial court. While the trial court indicated that plaintiff could pursue an action in the circuit court if valid claims remained following the arbitration of his retaliation claim, the trial court's ruling did not permit plaintiff to simply ignore the order granting defendant summary disposition as a matter of law and to file a new complaint, asserting the identical argument, four months later in the circuit court. Rather, plaintiff's remedy to challenge the trial court's ruling that he could not maintain his retaliation claim in circuit court was to file a motion for rehearing or reconsideration of the summary disposition order, MCR 2.119(F), or to file a timely appeal with this Court. MCR 2.116(J)(2); MCR 7.204(A)(1)(a).

Plaintiff did not file a motion for rehearing and, instead, filed an appeal as of right of the trial court's ruling in this Court in June 1997. However, plaintiff later moved to dismiss his appeal and this Court entered an order of dismissal on October 20, 1997. MCR 7.218(B). Notwithstanding his voluntary dismissal of the appeal, as noted, plaintiff filed yet another complaint in Wayne Circuit Court alleging the identical claim. It appears that the trial court erred to the extent that it considered plaintiff's second and third complaints alleging the identical issue already decided in the motion for summary disposition. Nonetheless, we hold that

plaintiff's subsequent claims were precluded by his failure to appeal the trial court's 1997 order. If plaintiff believed he was entitled to pursue his workers' compensation claim in state court rather than through arbitration, and that the court incorrectly granted summary disposition to defendant on this issue, he should have continued his timely appeal of the trial court's grant of summary disposition.

Thus, plaintiff's failure "to pursue the case in conformity with the [court] rules" justifies the ultimate dismissal of his retaliation claim. MCR 7.216(A)(10). Moreover, as to the trial court's summary disposition order regarding the application of the collective bargaining agreement to plaintiff's retaliation claim, the judgment on that issue became final when plaintiff voluntarily abandoned any challenge to that decision. *Lenz v City of Detroit*, 361 Mich 166, 172; 105 NW2d 156 (1960), quoting *Hailey v Wolf*, 320 Mich 59, 63; 30 NW2d 437 (1948) and 4 CJS Appeal and Error § 1386 ("[o]n the dismissal of an appeal . . . the cause stands in the trial court as if no appeal had ever been taken . . . [and] the decree or order appealed from becomes final . . . .")

We also agree with defendant's argument on cross appeal that plaintiff's PWDCRA claim required dismissal pursuant to MCR 2.116(C)(7), under the doctrine of res judicata. As established by plaintiff's inclusion of the PWDCRA claim in his second and third complaints, with due diligence, plaintiff could have included the PWDCRA claim (or, at that time, his HCRA claim) in his first complaint. Indeed, the record reflects that plaintiff's counsel knew about a disability discrimination claim while he argued the motion for summary disposition on plaintiff's *first* complaint. The doctrine of res judicata is broadly applied to bar "claims arising out of the same transaction that could have been litigated in a prior proceeding, but were not." *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001).<sup>2</sup>

In sum, both of plaintiff's claims should not have been reasserted in multiple complaints over the last several years. Thus, while we do so for different reasons, we affirm the trial court's dismissal of his claims.

/s/ Henry William Saad  
/s/ Michael R. Smolenski  
/s/ Donald S. Owens

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<sup>2</sup> Because we find that plaintiff's claims should have been dismissed, we need not address the other claims raised by the parties.