STATE OF MICHIGAN

COURT OF APPEALS

DAVID CASCIOLI,

Plaintiff-Appellant,

v

SURFSIDE INTERNATIONAL, L.L.C.,

Defendant-Appellee.

UNPUBLISHED
November 25, 2008

No. 280639
Oakland Circuit Court
LC No. 2006-078962-CD

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's order granting defendant summary disposition pursuant to MCR 2.116(C)(7). We affirm in part, reverse in part, and remand, and decide this case without oral argument under MCR 7.214(E).

Until October 25, 2004, plaintiff worked as the general manager of the Thunder Falls Water Park, owned by defendant. On December 9, 2004, plaintiff filed a claim in the Emmet District Court's Small Claims Division. Plaintiff's affidavit accompanying the claim asserted that defendant owed him $3,000 for "reimbursable expenses by agreement plus company expenses paid personal[l]y." On January 12, 2005, defendant filed a demand and order for removal to the district court, pursuant to MCR 4.306(A)(1).

Several weeks later, while the district court action remained pending, plaintiff filed an 11-count complaint against defendant in the Emmet Circuit Court. Plaintiff's circuit court complaint alleged "wrongful discharge in violation of public policy," negligent infliction of emotional distress, "unjust enrichment/promissory estoppel," breach of contract, fraud, misrepresentation, "bad faith promise," innocent misrepresentation, violation of the whistleblowers' protection act (WPA), MCL 15.361 *et seq.*, violation of the Civil Rights Act (CRA), MCL 37.2101 *et seq.*, and violation of the Persons with Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.*

On February 28, 2005, plaintiff filed in the district court a "motion to allow additional expenses," alleging that $3,876.49 represented "the face value of the unpaid expenses" originally sought in the small claims division. The motion averred that plaintiff had not included the full face amount of his unpaid expenses in the original small claim because he "was willing to forgo the higher face value of the Claim for the simplicity of The Small Claims Court and possibly Mediation." Plaintiff described the additional "reasonable expenses" as "[o]ne round trip plane

ticket from Home, in Tampa, Florida" and "[m]ileage allowance for travel to and from Detroit Metro Airport on two occasions."

On April 11, 2005, the parties stipulated to transfer venue of the Emmet Circuit Court action to the Oakland Circuit Court. On June 21, 2005, the Oakland Circuit Court dismissed the case without prejudice because plaintiff had not paid the statutory filing fee.

Meanwhile, the parties conducted discovery in the district court case, and on November 11, 2005 appeared for a scheduled bench trial. Plaintiff's counsel advised the court as follows,

> At this time, I'd like to withdraw this case. The Plaintiff has actually—is actually filing a case in Circuit Court that's going to incorporate this case so the Plaintiff wishes to dismiss this case. This case actually came about because it was a small claim matter that was removed to the District Court docket, and there's a case that's going to be pending in Circuit Court and these things can be incorporated in there.

Defendant objected to plaintiff's request, asserting that dismissal would constitute a violation of the mandatory joinder rule, MCR 2.203. Counsel for defendant urged, "So, if there is going to be a dismissal of this claim, it should be with prejudice so that we don't have to re-litigate it and we'll deal with the other issues in the Circuit Court." The district court ruled, "I think in this case discovery was supposed to be completed last June. Court's going to deny the Motion to Dismiss without prejudice." Plaintiff elected not to further pursue the district court action, prompting the district court to grant defendant's motion to dismiss the matter with prejudice.

On November 21, 2006, plaintiff filed a complaint in the Oakland Circuit Court alleging the same claims as those contained in the circuit court action that had been dismissed without prejudice in 2005. On May 7, 2007, defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(7), alleging that the compulsory joinder provisions of MCR 2.203(A) and the res judicata doctrine barred the circuit court claims. According to defendant, plaintiff could and should have brought his circuit court claims in the prior district court action. The circuit court ruled,

> The doctrine of res judicata bars any claims which was [sic] or could have been resolved in the prior action. Plaintiff asserts that statutory claims could not have been filed in first action as the district court lacks jurisdiction over such claims. However, he does not explain why the claims were not included in the first action or why he did not seek leave to transfer the action to the circuit court upon filing of his claims.
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> Further, plaintiff fails to indicate how the instant action survives application of the mandatory joinder rule, therefore, summary disposition is granted as the matter is barred by operation of res judicata and for violation of the mandatory joinder rule.

Plaintiff now appeals as of right.

We review de novo a grant of summary disposition under MCR 2.116(C)(7). *Novak v Nationwide Mut Ins Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999). When reviewing a motion for summary disposition under subrule (C)(7), we accept as true the plaintiff's well-pleaded allegations and construe them in the plaintiff's favor. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 377; 532 NW2d 541 (1995).

The compulsory joinder rule embodied in MCR 2.203(A) provides,

> In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

This Court has held that the compulsory joinder provision of MCR 2.203(A) does not apply to cases brought in the small claims division of the district court. *Kaiser v Smith*, 188 Mich App 495, 499; 470 NW2d 88 (1991). See also Corrigan, Giovan et al, Michigan Practice Guide: Civil Procedure Before Trial, § 5:229 (2006) ("The compulsory claim joinder rule does not apply to small claims cases."). Furthermore, because the claim and affidavit that plaintiff filed in the small claims division do not qualify as pleadings under MCR 2.110(A), the joinder rules do not apply. *Houdini Properties, LLC v City of Romulus*, 480 Mich 1022; 743 NW2d 198 (2008).

Plaintiff filed his initial action in the small claims court, where he had no obligation to join all possible claims against defendant. "In general, the small claims division furnishes a convenient and economical means of settling disputes where relatively small sums are involved." *Kerekes v Bowlds*, 179 Mich App 805, 809; 446 NW2d 357 (1989). In *Kerekes*, this Court recognized that by limiting the jurisdiction of the small claims division, "the Legislature has recognized that some claims are of lesser economic importance and should therefore be resolved at minimum cost." *Id*. The small claims division employs simplified procedures to provide the parties with "access to a socially acceptable method of dispute resolution at a cost in time and money which is commensurate with the amount in dispute." *Id*. at 809-810. Moreover, we decline to read into the court rules the otherwise nonexistent requirement that if a defendant elects to remove a small claims dispute to the district court, the plaintiff must amend his small claim to add all potential additional claims. Consequently, the circuit court improperly invoked MCR 2.203(A) as a basis for granting defendant summary disposition.

"The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action." *Adair v State of Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). Res judicata bars a second lawsuit when (1) the first action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matters contested in the second case were, or could have been, resolved in the first case. *Id*. The res judicata doctrine "bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Id*. The burden of establishing the applicability of res judicata rests on the party asserting the doctrine. *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006). "The question whether res judicata bars a subsequent action is reviewed de novo." *Adair*, *supra* at 119.

Plaintiff contends that defendant has failed to establish the third res judicata prong, that the district court could have resolved the matters contested in the circuit court case. Plaintiff argues that res judicata does not preclude his circuit court action because he could not have brought many of his circuit court claims in the district court. District courts have limited jurisdiction. MCL 600.8301 *et seq*. Regardless of the amount in controversy, a plaintiff must commence an action under the WPA in the circuit court rather than the district court. *Driver v Hanley*, 207 Mich App 13, 18; 523 NW2d 815 (1994). The circuit court also possesses exclusive jurisdiction of CRA claims, "even when potential damages are less than $10,000." *Baxter v Gates Rubber Co*, 171 Mich App 588, 591; 431 NW2d 81 (1988). Additionally, the PWDCRA specifically contemplates that actions alleging a violation of the act may only be brought in the circuit court. MCL 37.1606(2). Because plaintiff could not have raised these three claims in the district court, the circuit court erred by dismissing them on the grounds of res judicata. *Adair*, *supra* at 121 (res judicata does not apply unless "the matter in the second case was, or could have been, resolved in the first"); *Martino v Cottman Transmission Systems, Inc*, 218 Mich App 54, 59; 554 NW2d 17 (1996) (explaining that the commencement of a prior breach of contract action in Pennsylvania did not operate as res judicata and foreclose a later statutory rescission action in Michigan because "Pennsylvania's laws contain no analogous right," and the plaintiffs thus could not have raised the rescission claim in the previous action, and otherwise "would have to forfeit the claim.").

We must further consider whether res judicata bars plaintiff's remaining claims for "wrongful discharge in violation of public policy," negligent infliction of emotional distress, "unjust enrichment /promissory estoppel," breach of contract, fraud, misrepresentation, "bad faith promise," and innocent misrepresentation. In *Adair*, *supra* at 124-125, our Supreme Court applied a "broader transactional test" to determine whether a plaintiff should have brought a claim in an earlier action. The test described in *Adair* derived from 46 Am Jur 2d, Judgments § 533, p 801 [now 47 Am Jur 2d, Judgments § 479, p 38], which provides,

> [C]ourts determine whether a factual grouping constitutes a 'transaction' for purposes of res judicata pragmatically, by considering whether:
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> (1) the facts are related in time, space, origin, or motivation;
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> (2) they form a convenient trial unit; and
>
> (3) their treatment as a unit conforms to the parties' expectations.

Plaintiff's original small claims action involved defendant's alleged nonpayment of "reimbursable expenses" identified as cell phone bills, plane fare, and similar charges. Plaintiff limited the subject matter of the small claims case to the realm of expense reimbursement. Thus, the district court claims focused exclusively on whether defendant bore an obligation to repay business expenses purportedly paid by plaintiff. In the circuit court complaint, plaintiff asserted that defendant unjustly fired him because he suffered an on-the-job injury, and because he "threatened to report illegal activities and/or activities that Plaintiff had a good faith belief were illegal."

The facts underlying the expense-related small claim significantly differ in time, space, origin and motivation from the evidence necessary to prove that defendant wrongfully

discharged plaintiff or negligently inflicted emotional distress. Defendant has failed to demonstrate any direct or indirect connection between the claim for reimbursable expenses and the tort causes of action arising from the termination of plaintiff's employment. The two cases also involve separate and distinct legal duties and allege different wrongs. The allegations concern entirely different personal interests, require separate proofs, and do not form a "convenient trial unit."

Because the subject matters in the district and circuit court actions constitute neither a single transaction nor a series of interrelated transactions, res judicata does not bar plaintiff's wrongful discharge and negligent infliction of emotional distress counts. However, to the extent that plaintiff's claims for "unjust enrichment/promissory estoppel," breach of contract, and "bad faith promise" involve the same "reimbursable expenses" that supplied the basis for his small claim, res judicata precludes him from pursing these expenses.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher