STATE OF MICHIGAN

COURT OF APPEALS

INDEPENDENT BANK,

Plaintiff-Appellee,

v

CITY OF THREE RIVERS,

Defendant-Appellee,

and

THEODORE P. HENTCHEL, JR., Individually and as Trustee of the VICTORIA MAY HENTCHEL TRUST, UAD 9/27/2002,

Defendant-Appellant.

UNPUBLISHED
October 17, 2013

No. 305914
Calhoun Circuit Court
LC No. 2011-000757-CZ

Before: MURRAY, P.J., and DONOFRIO and BORRELLO, JJ.

PER CURIAM.

Defendant Theodore P. Hentchel, Jr., individually and as trustee of the Victoria May Hentchel Trust, UAD 9/27/2002, appeals as of right the trial court's order granting summary disposition for defendant City of Three Rivers (the City) and plaintiff Independent Bank (the Bank). Because the doctrine of res judicata bars Hentchel's attempt to relitigate issues that the trial court previously adjudicated, we affirm.

This case stems from a May 1, 2006, judgment entered in favor of the City against defendant Theodore P. Hentchel, Jr., a licensed attorney, in the amount of $41,961.01. On November 26, 2008, the City filed a complaint against Hentchel alleging that certain transfers that he made to the Victoria May Hentchel Trust, UAD 9/27/2002, were fraudulent and were made with the intent to defraud his creditors (the 2008 action). In the 2008 action, the trial court granted the City's motion for summary disposition, concluding that Hentchel's transfers of his interests in a pension, a savings and investment plan, and stock options violated the Uniform Fraudulent Transfer Act, MCL 566.31 *et seq*. The court entered a judgment in favor of the City in the amount of $47,616.50 and an injunction requiring Hentchel, as trustee of the trust, to transfer assets of the trust up to $47,616.50 plus interest to the City. Hentchel appealed the trial court's decision to this Court, which dismissed the appeal because Hentchel failed to "order and secure the filing of the 'full transcript of the testimony and other proceedings in the trial court or

tribunal' as required by MCR 7.210(B)(1)[.]" *City of Three Rivers v Hentchel*, unpublished order of the Court of Appeals, entered December 13, 2010 (Docket No. 299976).

On or about January 10, 2011, the trial court issued a request and writ for garnishment on behalf of the City and against Hentchel that was served on the Bank. Thereafter, the Bank filed with the court a garnishee disclosure that disclosed a trust account in the amount of $27,323.01. In a letter dated February 6, 2011, Hentchel directed the Bank not to turn over the funds in the account to the City. On March 9, 2011, the Bank filed this interpleader action asking the trial court to allow it to pay the garnished funds to the court or to a third party and asking to be discharged from all liability to either the City or the trust upon delivery of the funds.

The City moved for summary disposition arguing that Hentchel failed to file an objection to the writ of garnishment as provided by MCR 3.101(K). The City sought an order directing the Bank to turn over the funds to the City. In response to the motion, the Bank asserted that it took no position with respect to the underlying claims of the City and Hentchel and sought an order permitting it to deposit the garnished funds with the trial court or as directed by the court. The Bank requested an award of costs, including attorney fees incurred in the interpleader action. Hentchel also filed a motion for summary disposition asserting several arguments that challenged the trial court's previous decision in the 2008 action. Thereafter, the trial court consolidated the 2008 action and the interpleader action.

In response to Hentchel's motion, the City argued that res judicata barred relitigation of issues that the trial court had previously addressed and adjudicated. The City asserted that because this Court dismissed Hentchel's appeal in the 2008 action, all orders that adjudicated the issues pertaining to that action were final.

The trial court granted the City's motion for summary disposition and ordered the Bank to turn over the garnished funds to the City. The court also granted summary disposition for the Bank pursuant to MCR 2.116(I)(2) and discharged it from any liability with respect to the garnishment. The court ordered Hentchel to pay the Bank's actual costs incurred in bringing the interpleader action. The court denied Hentchel's motion for summary disposition on the basis that res judicata barred Hentchel from relitigating the issues presented in his motion. Finally, the court imposed sanctions on Hentchel pursuant to MCR 2.114(E). Hentchel now appeals the trial court's decision.

On appeal, Hentchel raises many of the same arguments that the trial court determined were barred by the doctrine of res judicata because the court adjudicated those issues in the 2008 action. We review de novo the application of legal doctrines such as res judicata. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

The doctrine of res judicata is intended to conserve judicial resources, encourage reliance on adjudication, foster finality in litigation, and relieve parties of the cost and vexation of multiple lawsuits. *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 43; 795 NW2d 229 (2010). "Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata applies when "(1) the first action was decided on the merits, (2) the matter contested in

the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Id*.

In this case, Hentchel attempted to litigate many of the same issues in the interpleader action that had already been decided on the merits in the 2008 action. The trial court consolidated the interpleader action with the 2008 action after it had entered a final judgment in the 2008 action and only postjudgment proceedings to enforce the judgment remained. The interpleader action itself pertained to the City's attempt to enforce the judgment in the 2008 action. Hentchel appealed the judgment in the 2008 action to this Court, which dismissed his appeal because he failed to file the transcript of the testimony and other lower court proceedings.

Hentchel appears to challenge the trial court's determination that res judicata barred the litigation of his arguments on the basis that there is no judgment against Hentchel as trustee of the trust and that Hentchel, as trustee, was not a party to the 2008 action. Thus, Hentchel appears to contest the third res judicata requirement, i.e., that "both actions involve the same parties or their privies." *Dart*, 460 Mich at 586.

The record shows that the caption in the consolidated 2008 action and interpleader action was amended to include Hentchel, as trustee, as a party at the same time that the two actions were consolidated. The City filed the 2008 action against Hentchel alleging that he made fraudulent transfers to the trust in an effort to defraud his creditors. On August 16, 2010, the trial court entered a judgment in favor of the City in the amount of $47,616.50 and an injunction requiring Hentchel, as trustee, to transfer assets of the trust up to $47,616.50 plus interest to the City. On November 29, 2010, the trial court entered an order to show cause requiring Hentchel to appear before the court and show cause why he should not be held in contempt for failing to turn over trust assets to the City. In response, Hentchel asserted that he, as trustee, was never made a party to the action and that the trial court had no jurisdiction over him as trustee. Thereafter, the trial court stated:

> On August 16, 2010, this court entered an order in a case where Theodore P. Hentchel Jr., was a party. It required the trustee to transfer the assets of the Victor[ia] May Hentchel Trust up to $47,616.50 plus interest forthwith to the Plaintiff, City of Three Rivers. There's no evidence that that order has been complied with at this point.
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> Mr. Hentchel in his response to the show cause order that triggered these proceedings notes that Theodore Hentchel Jr., as trustee is not specifically identified as a party . . . .
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> * * *

> Mr. Hentchel is an attorney. When he initially responded in this case, he responded on behalf of himself and the two trusts.[1] In his response [he] acknowledged that he was a trustee. He has filed various things with the court acknowledging that he's the trustee of the trust, but now is essentially arguing that because the trust was identified as a party rather than the trustee that the court cannot take action to enforce its orders.
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> * * *
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> The court does have the authority under MCR 2.207 to address mis-joined or non-joined . . . parties. The court also has the authority under [MCR] 2.118 to permit amendment of pleadings. Both these rules are discretionary.
>
> Mr. Hentchel has been aware from the beginning that the trust was implicated as a party. He's admitted from the beginning that he's a trustee. He's appeared on behalf of both himself and the trust. He's filed pleadings or affidavits with the court identifying himself as the trustee in that context.
>
> While the court recognizes the legal argument behind the position advanced by Mr. Hentchel, the court is satisfied that throughout these proceedings he's acted on behalf of the trust, as well as himself and advanced positions on behalf of the trust, as well as himself.
>
> The court exercising the discretion that it has will amend the caption of the case to identify Theodore P. Hentchel Jr., individually and as trustee of the Victoria May Hentchel Trust that he has appeared on behalf of, and acted on behalf of throughout these proceedings.

Accordingly, Hentchel, as trustee, was added as a party in the 2008 action at the same time that it was consolidated with the interpleader action. MCR 2.207 permits a trial court to add a party at any stage of the proceeding, even on appeal or on remand following an appeal. *Henkel v Henkel*, 282 Mich 473, 488; 276 NW 522 (1937); *Shouneyia v Shouneyia*, 291 Mich App 318, 325; 807 NW2d 48 (2011). Hentchel's argument that he, as trustee, could not have properly been added as a party because the statute of limitations had expired is unavailing. Even if the statute of limitations had expired, an "additional defendant may be brought [into an action] after the expiration of the statute of limitations where the new party is a necessary party . . . ." *Forest v Parmalee*, 60 Mich App 401, 406; 231 NW2d 378 (1975), aff'd on other grounds 402 Mich 348 (1978). Necessary parties are "persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief . . . ." MCR 2.205(A). Because Hentchel, as trustee, held legal title to the assets of the trust,

[1] This appeal involves only one of the trusts.

Hentchel, as trustee, was a necessary party[2] and could be joined regardless whether the statute of limitations had expired. Moreover, as the trial court recognized, the court merely amended the caption to reflect the manner in which the case was being litigated, including the fact that Hentchel had acted on behalf of himself individually and on behalf of the trust. Thus, because the 2008 action involved the same parties, including Hentchel as trustee, the trial court correctly determined that res judicata barred Hentchel's attempt to relitigate issues pertaining to the judgment in the 2008 action. Further, because Hentchel's remaining issues on appeal pertain solely to the judgment in the 2008 action, res judicata likewise precludes our review of those issues.

Affirmed. The City and the Bank, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Christopher M. Murray
/s/ Pat M. Donofrio
/s/ Stephen L. Borrello

[2] Our conclusion is consistent with *Healthsource v Urban Hosp Care Plus*, unpublished opinion per curiam of the Court of Appeals, issued December 14, 2006 (Docket No. 270482), on which Hentchel relies. In that case, this Court stated:

> Because the trustee holds legal title to the trust assets in this case, the trustee's presence as a party was necessary to permit the trial court to render complete relief. Accordingly, the trustee should have been joined as a necessary party in this matter. MCR 2.205(A). "Parties may be added or dropped by order of the court . . . on the court's own initiative at any stage of the action and on terms that are just." MCR 2.207. On remand, the trial court shall join the trustee as a party in this matter, and shall align it as a plaintiff or defendant according to its respective interest. MCR 2.205(A); MCR 7.216(A)(7). [*Id*., slip op at 8.]