

DA 23-0135

IN THE SUPREME COURT OF THE STATE OF MONTANA

2023 MT 200N

ISAAC DUPUIS,

Plaintiff and Appellant,

v.

STATE OF MONTANA DEPARTMENT OF LABOR,
UNEMPLOYMENT INSURANCE DIVISION;
UNEMPLOYMENT INSURANCE APPEALS BOARD,

Defendants and Appellees.

APPEAL FROM: District Court of the Twentieth Judicial District,
In and For the County of Lake, Cause No. DV-22-144
Honorable Molly Owen, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Michael O'Brien, Logan Nutzman, St. Peter Law Office, P.C., Missoula,
Montana

For Appellees:

Mackenzie Bradt, Risk Management and Tort Defense Division, Helena,
Montana

Submitted on Briefs: September 27, 2023

Decided: October 24, 2023

Filed:


Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Isaac Dupuis (Dupuis) appeals from the January 9, 2023 dismissal of his complaint. We affirm.

¶3 Dupuis sought unemployment benefits, which the Department of Labor (Department) denied. He sought a redetermination, which concluded Dupuis was ineligible for unemployment benefits he had sought between July 12, 2020, and March 13, 2021. Dupuis then appealed that decision to the Unemployment Insurance Appeals Board (UIAB), which affirmed the Department's decision on July 13, 2021. On August 11, 2021, Dupuis timely filed a petition for judicial review of the decision in the District Court under § 39-51-2410(2), MCA. However, he failed to timely serve the petition within 30 days of filing as required by § 39-51-2410(2), MCA. The Department filed a M. R. Civ. P. 12(b)(5) motion to dismiss the petition for insufficient service of process. The court dismissed the petition on February 2, 2022, finding that Dupuis had served the Department more than 60 days after filing the petition. Dupuis did not appeal the dismissal, and more than six months later, on August 11, 2022, Dupuis filed a complaint in the District Court alleging the same issues as in the petition. The court dismissed the complaint upon the Department's

Rule 12(b)(1) and 12(b)(6) motion to dismiss on res judicata grounds (among others). Dupuis appealed.

¶4 Res judicata “bars the relitigation of a claim that the party has already had an *opportunity* to litigate.” *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267 (emphasis added). It does not matter that the underlying merits of a claim were not substantively resolved. *Touris v. Flathead County*, 2011 MT 165, ¶ 15, 361 Mont. 172, 258 P.3d 1. Res judicata merely requires a final judgment on the merits of the prior case in order to be applicable. *Baltrusch*, ¶ 15. Montana Rule of Civil Procedure 41 is clear: “Unless the dismissal order states otherwise, . . . any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” M. R. Civ. P. 41(b).

¶5 Dupuis argues that he should be allowed to refile because the first dismissal was without prejudice and therefore res judicata does not apply. However, the first dismissal did not state whether it was with or without prejudice, only stating that “[t]he Motion to Dismiss is granted.” Nor is a dismissal for insufficient service of process one that should be treated as without prejudice under Rule 41. Because the dismissal did not state otherwise and is not an exception to the general rule that dismissals are usually with prejudice, it should be considered with prejudice. Further, the court’s order makes clear that it was treating the dismissal with prejudice: “Dismissal for purely procedural reasons is not favored, and arguably a harsh remedy here, but it is consistent with the legislature’s intent to have unemployment proceedings progress to a prompt resolution.”

¶6 Finally, even if the first dismissal was without prejudice, and assuming the statutory requirements under § 39-51-2410(2), MCA, to file his petition within 30 days of the UIAB decision were tolled until the first dismissal, Dupuis was well past any subsequent deadline to refile when he filed his complaint more than six months after dismissal.

¶7 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review.

¶8 Affirmed.

/S/ MIKE McGRATH

We Concur:

/S/ INGRID GUSTAFSON
/S/ BETH BAKER
/S/ DIRK M. SANDEFUR
/S/ JIM RICE