

Court of Claims of Ohio

The Ohio Judicial Center
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SHAREN ANN PENDLETON

Plaintiff

v.

UNIVERSITY OF CINCINNATI HOSPITAL

Defendant

Case No. 2008-07021

Judge Joseph T. Clark

ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

On July 1, 2008, defendant filed a motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(6) or, in the alternative, a motion for summary judgment pursuant to Civ.R. 56. On July 25, 2008, plaintiff filed a response. On August 5, 2008, the court converted defendant's motion to a motion for summary judgment. On September 30, 2008, the court conducted an oral hearing on the motion.

Civ.R. 56(C) states, in part, as follows:

"Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule. A summary judgment shall not be rendered unless it appears from the evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, that party being entitled to have the evidence or

stipulation construed most strongly in the party's favor." See also *Gilbert v. Summit County*, 104 Ohio St.3d 660, 2004-Ohio-7108, citing *Temple v. Wean United, Inc.* (1977), 50 Ohio St.2d 317.

On February 6, 2008, plaintiff filed a complaint in Case No. 2008-01944 based upon a medical condition that she became aware of in February 2006. On March 12, 2008, plaintiff filed an amended complaint. On May 27, 2008, the court granted defendant's motion to dismiss plaintiff's complaint pursuant to Civ.R. 12(B)(6) for failure to comply with the one-year statute of limitations for medical claims. Plaintiff did not appeal. On June 11, 2008, plaintiff filed her complaint in this case, which is identical to the amended complaint filed in Case No. 2008-01944. Defendant asserts in its motion that plaintiff's complaint in this case is barred by the doctrine of res judicata.

"The doctrine of res judicata precludes 'relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction.'" *Thompson v. Ohio State Univ.*, Franklin App. No. 08AP-331, 2008-Ohio-5565, ¶6. To apply the doctrine of res judicata, a court must find that: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Id.* (Citations omitted.)

"Where it is properly established that in a prior suit on the same cause of action between the same parties a valid and existing final judgment was rendered for defendant on the ground that the statute of limitations had expired prior to its commencement, such judgment, whether or not erroneous, is on the merits, and is *res judicata*, and the plaintiff is not entitled to recommence his action under Section 2305.29, Revised Code. (Section 2305.19, Revised Code, construed: *Belpash v. Emerine*, 119 Ohio St. 226, limited and distinguished.)" *LaBarbera v. Batsch* (1967), 10 Ohio St.2d 106, syllabus.

Upon review of the evidence submitted with defendant's motion, the court finds that its entry of dismissal in Case No. 2008-01944 was a valid judgment on the merits; that this action involves the same parties as in Case No. 2008-01944; that this action raises claims that were or could have been litigated in Case No. 2008-01944; and that both actions arise out of the same transaction or occurrence. Therefore, the court finds that the doctrine of res judicata applies. Plaintiff's contention that the one-year savings statute applies to her claim is without merit.

"R.C. 2305.19 can have no application unless an action is timely commenced, was dismissed without prejudice, and the applicable statute of limitations had expired by the time of such dismissal." *Reese v. Ohio State University Hospital* (1983), 6 Ohio St.3d 162, 163. Defendant's motion for summary judgment is GRANTED and judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

JOSEPH T. CLARK
Judge

cc:

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HTS/cmd
Filed December 15, 2008
To S.C. reporter January 20, 2009