

IN THE UTAH COURT OF APPEALS

-----ooOoo-----

Michael Weaver,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellant,)	
)	Case No. 20090539-CA
v.)	
)	
Annett Vandersteen and)	F I L E D
Craig Henry Kehl,)	(October 16, 2009)
)	
Defendants and Appellees.)	2009 UT App 294

Third District, Salt Lake Department, 090903013
The Honorable Glenn K. Iwasaki

Attorneys: Michael Weaver, Draper, Appellant Pro Se
 Larry S. Jenkins, Richard J. Armstrong and Lance D.
 Rich, for Appellees

Before Judges Thorne, Orme, and McHugh.

PER CURIAM:

Michael Weaver appeals the district court's order dismissing his complaint. This matter is before the court on a sua sponte motion for summary disposition. We affirm.

When reviewing whether the district court properly granted a motion to dismiss for failure to state a claim upon which relief may be granted, this court "accepts the factual allegations in the complaint as true and consider[s] them, and all reasonable inferences to be drawn from them, in the light most favorable to the non-moving party." Coroles v. Sabey, 2003 UT App 339, ¶ 2, 79 P.3d 974. Dismissal under rule 12(b)(6) of the Utah Rules of Civil Procedure is warranted "only in cases in which, even if the factual assertions in the complaint were correct, they provide no legal basis for recovery." Mackey v. Cannon, 2000 UT App 36, ¶ 13, 996 P.2d 1081. The trial court's grant of a motion to dismiss is a question of law reviewed for correctness. See id. ¶ 9.

The allegations in Weaver's complaint derive from a prior proceeding wherein his parental rights were terminated. Weaver concedes that his complaint is premised on violations of his "residual parental rights," civil rights violations, and violations of the children's rights.

With regard to Weaver's claims stemming from his alleged "residual parental rights," Utah Code section 78A-6-105(42) provides that once parental rights are terminated, there is a "permanent elimination of all parental rights and duties, including residual parental rights and duties, by court order." Utah Code Ann. § 78A-6-105(42) (2008). Thus, Weaver's claims which are premised on his alleged "residual parental rights" fail as a matter of law.

Although styled as an action against the foster parents, Weaver's remaining claims constitute an attempt to relitigate the termination of his parental rights or issues raised in federal court. Specifically, Weaver's complaint requests that his case "be sent to the proper court to grant another parental rights hearing." Weaver also reasserts claims challenging the propriety of the children's foster placement, civil rights violations, violations of the children's rights, and the foster parents' role in the termination proceeding.

"The term 'res judicata' refers generally to the preclusive effects of judgments previously entered, and consists of 'two branches: claim preclusion and issue preclusion'". D.U. Company, Inc. v. Jenkins, 2009 UT App 195, ¶ 14, 635 Utah Adv. Rep. 31. Claim preclusion refers to claims that were raised or could have been raised in the prior action. See id. Issue preclusion precludes parties from relitigating issues which were previously adjudicated. See id. Of Weaver's claims not based on alleged residual parental rights, the record indicates that such claims were either adjudicated, or could have been adjudicated, in his prior federal and juvenile court proceedings. Thus, Weaver's remaining claims are barred by the doctrine of res judicata and do not state claims upon which relief may be granted.

To the extent that Weaver seeks monetary damages from the foster parents, even if the factual assertions in the complaint were correct they provide no legal basis for recovery. Thus, granting the motion to dismiss was appropriate. See Mackay, 2000 UT App 36, ¶ 13.

Accordingly, the district court's order is affirmed.

William A. Thorne Jr.,
Associate Presiding Judge

Gregory K. Orme, Judge

Carolyn B. McHugh, Judge