STATE OF MICHIGAN

COURT OF APPEALS

JAMES HARKEN,

Plaintiff-Appellant,

v

GENERAL MOTORS CORPORATION,

Defendant,

and

CONTROL SYSTEM INTEGRATORS, INC.,

Defendant-Appellee.

UNPUBLISHED
November 24, 2009

No. 287490
Ingham Circuit Court
LC No. 08-000845-CZ

Before: Meter, P.J., and Murphy, C.J., and Zahra, J.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition.

Plaintiff was allegedly injured in September 1995 while working for Control System Integrators, Inc. (CSII), in a General Motors Corporation (GM)[1] plant, and he later sued GM for negligence. GM would not allow him to continue working in the plant because of the lawsuit, and he filed a lawsuit for retaliation against GM and CSII in June 1999. The 1999 lawsuit was dismissed after CSII and GM moved for summary disposition, and the dismissal was upheld by this Court. *Harken v General Motors Corp*, unpublished opinion per curiam of the Court of Appeals, issued April 15, 2005 (Docket No. 245715).[2] This Court stated, in part, that "CSII did not intentionally discriminate against plaintiff in retaliation for bringing the third party action" and that "the trial court did not err in finding that GM did not intentionally interfere with plaintiff's business relationship with CSII." *Id*., slip op at 3. This Court also stated: "[Plaintiff

[1] GM had been a party to this appeal but was dismissed due to bankruptcy proceedings.

[2] Plaintiff's later application for leave to appeal in the Supreme Court was denied.

argues] that the trial court erred in granting GM summary disposition based on its finding that plaintiff failed to show that GM intended to retaliate against him for bringing the negligence claim. We disagree." *Id*.

In June 2007, plaintiff filed another complaint, alleging a "violation of MCR 2.11(C)(7) [sic]." He stated that GM and CSII improperly withheld interrogatories from the Court of Appeals and thereby "subverted the justice system." The 2007 lawsuit was dismissed after CSII and GM moved for summary disposition. The dismissal was in part based on res judicata, collateral estoppel, and the applicable statute of limitations. Plaintiff did not appeal from this dismissal.

In February 2008, plaintiff filed another complaint, this time in federal district court, claiming that the dismissal of the earlier lawsuits denied him his right to a jury trial. The federal lawsuit was dismissed for lack of subject-matter jurisdiction.

On June 17, 2008, plaintiff filed his complaint in the instant case, stating, in pertinent part:

> 16. The United States District Court claims it does not have jurisdiction in this matter, therefore the Michigan State Court system must have jurisdiction in this matter.
>
> 17. Plaintiff claims that the retaliation by Control System Integrators, and General Motors caused a financial disaster for plaintiff. Since approximately June 28, 1996, plaintiff's yearly pay has averaged less than half what he would have been making had plaintiff not been illegally removed from his position.

CSII moved for summary disposition under MCR 2.116(C)(7) and (8), alleging that the lawsuit was barred by res judicata, collateral estoppel, and the applicable statute of limitations. GM joined in the motion. At the motion hearing, the court made the following statements to plaintiff:

> Now, you understand the law provides that when you file a lawsuit, you're supposed to incorporate in that lawsuit and that complaint all the claims that you possess at that point in time against the defendant, because if you don't, you're going to lose them.
>
> * * *
>
> You can't file a lawsuit for one claim one day and a lawsuit for another claim the next day and wait a year, file another one. You have to file them all at once.

The court then stated:

> The [c]ourt grants the motion on the basis of res judicata. Also, I agree . . . that the statute of limitations may apply here and certainly collateral estoppel applies. The [c]ourt finds this to be a frivolous lawsuit and sanctions should be

> granted but since they're probably not collectable, that's denied – or it's not even asked for so I agree with defendants. It's useless.

Plaintiff's arguments on appeal are confusing, at best. He seems to be primarily arguing that he never had a chance to litigate his claims because of the ruling by the Court of Appeals in the 1999 lawsuit. At any rate, we find that res judicata clearly applied to bar the instant lawsuit.

The applicability of res judicata is a question of law that we review de novo. *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). We also review de novo a trial court's decision regarding a motion for summary disposition. *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Res judicata requires proof of four elements:

> (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first case; and (4) both actions involved the same parties or their privies. [*Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006).]

The burden of establishing the applicability of res judicata is on the party asserting it. *Baraga County v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

Res judicata bars not only claims actually litigated in the first case but also "every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." See *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

Here, the elements of res judicata were clearly satisfied. Both the 1999 and 2007 lawsuits involved the same parties and were disposed of by way of a final decision on the merits. See *Capital Mortgage Corp v Coopers & Lybrand*, 142 Mich App 531, 536; 369 NW2d 922 (1985) ("summary judgment is the procedural equivalent of a trial and is a judgment on the merits which bars relitigation on principles of res judicata"). Moreover, the matter contested in the present case – involving plaintiff's desire to obtain damages for alleged retaliation – was resolved in the earlier cases. To the extent that plaintiff is now concentrating on his desire for a jury trial, that issue was implicitly raised, and could certainly have been explicitly raised, in the earlier cases. The trial court did not err in dismissing this case based on res judicata.

Given our resolution of this issue, we need not address the additional issues raised on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ William B. Murphy
/s/ Brian K. Zahra