

STATE OF MICHIGAN
COURT OF APPEALS

RAYMOND JACKSON,

Plaintiff–Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant–Appellee.

UNPUBLISHED

June 18, 1996

No. 174631

LC No. 93-075679-AW

Before: O’Connell, P.J., and Sawyer and G.R. Corsiglia,* JJ.

PER CURIAM.

Plaintiff appeals by right from a grant of summary disposition in favor of defendant on his suit for release from confinement and damages. We affirm.

Plaintiff asserts that his convictions should be voided under article IV(e) of the Interstate Agreement on Detainers (IAD), codified at MCL 780.601; MSA 4.147(1), because, after being held for a time at the Wayne County jail as a federal prisoner awaiting trial on state charges, he was moved to a federal facility before being tried. A Wayne circuit judge later issued a writ of habeas corpus *ad prosequendum*, and plaintiff was returned to Michigan to stand trial. The writ of habeas corpus *ad prosequendum* issued by the Wayne circuit judge and honored by federal authorities was a proper means independent of the IAD by which the state obtained custody of plaintiff to place him on trial. *People v McLemore*, 411 Mich 691, 694; 311 NW2d 720 (1981); *People v Wilden (On Rehearing)*, 197 Mich App 533, 537; 496 NW2d 801 (1992). Because custody of plaintiff was obtained pursuant to the writ, the provisions of the IAD were inapplicable to his case. *McLemore, supra*. Plaintiff cites *United States ex rel Esola v Groomes*, 520 F2d 830 (CA 3, 1975), which is not binding precedent on this Court, in which the third circuit held that the IAD provides the exclusive means of transferring a prisoner when it is available. However, the view of the *Esola* court is directly contrary to our Supreme Court’s decision in *McLemore*. The circuit court properly granted summary disposition to defendant under MCR 2.116(C)(8). This issue is dispositive.

* Circuit judge, sitting on the Court of Appeals by assignment.

Because plaintiff does not have a clear legal right to be released from imprisonment on the ground that he has asserted and, therefore, has not shown that defendant had a clear legal duty to release him, the circuit court did not abuse its discretion by declining to grant his request for a writ of mandamus directing defendant to release him from custody. *W A Foote Memorial Hosp v Dep't of Public Health*, 210 Mich App 516, 525-526; 534 NW2d 206 (1995).

Plaintiff asserts that the circuit court erred by determining that his claim was barred by res judicata due to his earlier suit against defendant, on the same basis, in the Court of Claims. This is immaterial because defendant was entitled to summary disposition irrespective of this issue. Res judicata barred plaintiff's claim for damages which was or could have been fully litigated in the Court of Claims, *Bd of Co Road Comm'rs for the Co of Eaton v Schulz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). However, because the Court of Claims determined that his cause of action was of a type that could not be remedied by an award of damages against the state, res judicata did not bar his claim for release from imprisonment. *77th District Judge v State of Michigan*, 175 Mich App 681, 700; 438 NW2d 333 (1989).

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ George R. Corsiglia