STATE OF MICHIGAN

COURT OF APPEALS

DONALD C. LITTLE,

Plaintiff-Appellant,

v

SALINE AREA SCHOOLS and SALINE AREA BOARD OF EDUCATION,

Defendants-Appellees.

UNPUBLISHED
July 1, 1997

No. 194310
Washtenaw Circuit Court
LC No. 94-003620-CK

Before: Gage, P.J., and McDonald and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(7). The issue plaintiff raised in circuit court was whether his resignation from his teaching position and defendants' acceptance of his resignation constituted a contract that should be rescinded because of their mutual mistake of fact regarding plaintiff's probationary status. The circuit court declined to decide that issue because it held that plaintiff was collaterally estopped from relitigating an issue conclusively determined by the State Tenure Commission. We affirm the lower court's order, but for the reason that the doctrine of res judicata bars plaintiff from bringing this claim.

The applicability of both collateral estoppel and res judicata are questions of law that this Court reviews de novo on appeal. *Husted v Auto-Owners Ins Co,* 213 Mich App 547, 555; 540 NW2d 743 (1995). This Court also reviews de novo a trial court's grant of summary disposition. *Pinckney Community Schools v Continental Casualty Co,* 213 Mich App 521, 525; 540 NW2d 748 (1995). The applicable standard of review under MCR 2.116(C)(7) requires this Court to accept all of the plaintiff's well-pleaded allegations as true and to construe them most favorably to the plaintiff. *Jones v State Farm Mutual Automobile Ins Co*, 202 Mich App 393, 396; 509 NW2d 829 (1993).

The factual issue in direct dispute before the commission was whether plaintiff was "constructively discharged from his employment" because defendants refused to allow plaintiff to withdraw his resignation. The commission decided that plaintiff was not contructively discharged because he had voluntarily resigned. The commission made some references to the mutual mistake issue but declined to resolve the issue because, as it accurately noted, it is without equitable jurisdiction to

afford plaintiff the remedy of rescission. *Benton Harbor Area Schools Bd of Ed v Wolff,* 139 Mich App 148, 155-156; 361 NW2d 750 (1984). Rescission of a contract is an equitable remedy to be exercised in the sound discretion of the trial court. *Schmude Oil Co v Omar Operating Co,* 184 Mich App 574, 587; 458 NW2d 659 (1990).

Collateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in that prior proceeding. *McMichael v McMichael,* 217 Mich App 723, 727; 552 NW2d 688 (1996). Collateral estoppel can apply to administrative determinations like the commission's decision in this case if the proceedings were adjudicatory, if a method of appeal was provided, and if the Legislature intended that the administrative determination was to be final in the absence of an appeal. *Nummer v Dep't of Treasury,* 448 Mich 534, 542; 533 NW2d 250 (1995). Plaintiff argues that the mutual mistake issue was not actually and necessarily determined in the prior proceeding. We agree.

The commission's lack of equitable jurisdiction is the factor that precludes an application of the doctrine of collateral estoppel in this case. In *Viera v Saginaw Bd of Ed,* 91 Mich App 555; 283 NW2d 796 (1979), we held that the teacher was collaterally estopped from challenging his discharge in a subsequent case under a different theory because the validity of his discharge was conclusively decided by the commission. *Id.* at 559-560. In reaching this holding, we noted that the plaintiff could have defended against the discharge before the commission with this different theory. *Id.* at 560-561. In contrast, plaintiff in this case could not have defended against his discharge before the commission with the mutual mistake argument because the commission lacked equitable jurisdiction to grant rescission. Therefore, unlike our holding in *Viera* that the plaintiff was collaterally estopped by the commission's decision, the commission's decision in this case does not preclude relitigation of the issue in this second action.

We also note that plaintiff could not be collaterally estopped by the prior judicial proceeding between these parties, a wrongful discharge suit filed by plaintiff in August 1989, because the order to grant defendants summary disposition in the prior proceeding did not actually or necessarily determine the issue in this case, mutual mistake and contract rescission. To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v Michigan National Bank,* 172 Mich App 456, 463; 432 NW2d 338 (1988).

Although plaintiff is not collaterally estopped from raising the issue of mutual mistake or contract rescission as the lower court held, the lower court's grant of summary disposition to defendants was proper for a different reason, namely, that an application of the doctrine of res judicata bars plaintiff from bringing a second cause of action against these same defendants. This Court will not reverse a lower court's decision where it reached the correct result, but for the wrong reason. *Integral Ins Co v Maersk Container Service Co, Inc,* 206 Mich App 325, 332-333; 520 NW2d 656 (1994).

Res judicata, or claim preclusion, 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. *Ozark v Kais,*

184 Mich App 302, 307; 457 NW2d 145 (1990). Res judicata requires that: (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; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994).

Because we have stated in a previous decision that summary disposition constitutes a determination on the merits, *Schwartz v Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991), it is the third element of res judicata that is at issue in this case: whether the mutual mistake and contract rescission issue of this case was or could have been resolved in the wrongful discharge action before the circuit court in 1989. As noted above, the mutual mistake and contract rescission issue could not have been remedied by the commission, so res judicata does not apply to that administrative decision.

The test to determine whether two judicial actions involve the same subject is whether the facts are identical in both actions or whether the same evidence would sustain both actions. *Jones, supra* at 401. If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata. *Id.* Thus, res judicata bars litigation in the second action not only of those claims actually litigated in the first action, but claims arising out of the same transaction that the parties, exercising reasonable diligence, could have litigated but did not. *Martino v Cottman Transmissions Systems, Inc*, 218 Mich App 54, 57-58; 554 NW2d 17 (1996).

Here, the first case and the second case both arise from the same factual transaction of plaintiff's resignation from his employment as a public school teacher. Specifically, both suits involve the facts of plaintiff's probationary status. The wrongful discharge suit requires the facts of plaintiff's probationary status to resolve whether just cause was required to terminate his employment. This suit alleging mutual mistake requires the facts of plaintiff's probationary status to resolve whether the parties were in fact or in law mistaken. When plaintiff brought his wrongful discharge suit in circuit court in 1989, he could have exercised reasonable diligence and also added a count asserting that the alleged contract should be rescinded due to mutual mistake. Therefore, plaintiff's claim is now barred by res judicata.

Because we decide that plaintiff is barred from bringing this claim, we do not reach the merits of whether plaintiff's tender of his resignation and defendants' acceptance was a contract capable of rescission.

Affirmed.

/s/ Hilda R. Gage
/s/ Gary R. McDonald
/s/ E. Thomas Fitzgerald