

STATE OF MICHIGAN  
COURT OF APPEALS

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HERBERT W. G. CLANTON,

Plaintiff-Appellant,

v

CIVIL SERVICE COMMISSION, CIVIL  
SERVICE COMMISSION EMPLOYMENT  
RELATIONS BOARD, EMPLOYMENT  
RELATIONS BOARD ADMINISTRATIVE  
OFFICER, and OFFICE OF THE STATE  
EMPLOYER,

Defendants,

and

DEPARTMENT OF TRANSPORTATION,

Defendant-Appellee.

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UNPUBLISHED

April 22, 2010

No. 287980

Wayne Circuit Court

LC No. 08-101251-CD

Before: BANDSTRA, P.J., and BORRELLO and SHAPIRO, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court opinion and order granting summary disposition to defendant Department of Transportation (MDOT) pursuant to MCR 2.116(C)(7) on the basis that the action against MDOT was barred by res judicata.<sup>1</sup> We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

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<sup>1</sup> This Court previously dismissed for lack of jurisdiction plaintiff's claim of appeal with respect to the dismissal of defendants Civil Service Commission, the Civil Service Commissioners, the Employment Relations Board, and the Employment Relations Board's Administrative Officer, and ordered that the portion of plaintiff's brief containing arguments pertaining to these defendants be stricken. *Clanton v Civil Service Commission*, unpublished order of the Court of Appeals, entered March 5, 2009 (Docket No. 287980).

We review de novo decisions regarding a motion for summary disposition and questions involving application of res judicata. *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998). The circuit court determined that plaintiff's action against MDOT was barred by res judicata because it raised the same claims that plaintiff previously presented in Ingham Circuit Court No. 06-001148-CD, which was dismissed with prejudice.<sup>2</sup> Plaintiff does not directly challenge any of the elements of res judicata. See *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006). Rather, citing *Hoff v City of Mesa*, 344 P2d 1013 (Ariz, 1959), he asserts that "fraud or collusion" is an exception to res judicata. This Court has recognized that fraud may prevent the application of res judicata in limited circumstances. *Sprague v Buhagiar*, 213 Mich App 310, 313-314; 539 NW2d 587 (1995). However, the exception does not apply merely because a plaintiff asserts fraud in a pleading; it "pertains only if the fraud is characterized as extrinsic fraud," i.e., "fraud outside the facts of the case." *Id.* at 313. Here, plaintiff refers to fraud and collusion, but does not suggest, plead, or factually establish any extrinsic fraud that would bring the case within the fraud exception to res judicata.

In a reply brief, plaintiff asserts that the circuit court in the prior action was "without jurisdiction as mandated" by MCL 462.26(3) and MCR 8.111(D). However, he does not explain the relevance of these authorities to this case, or to the circuit court's jurisdiction in the prior case. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007).

Plaintiff has not presented any persuasive reason for overturning the trial court's determination that this action against MDOT was barred by res judicata.

Affirmed.

/s/ Richard A. Bandstra  
/s/ Stephen L. Borrello  
/s/ Douglas B. Shapiro

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<sup>2</sup> This Court affirmed the dismissal of the prior case in *Clanton v Dep't of Transportation*, unpublished memorandum opinion of the Court of Appeals, issued October 21, 2008 (Docket No. 277440).