

STATE OF MICHIGAN
COURT OF APPEALS

FRANK J. LAWRENCE, JR.,

Plaintiff-Appellant/Cross-Appellee,

v

BLOOMFIELD TOWNSHIP,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED

January 20, 2004

No. 243527

Oakland Circuit Court

LC No. 2002-037671-CZ

Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Plaintiff was prosecuted in the 48th District Court for violating a Bloomfield Township ordinance. He subsequently filed this action in the Oakland Circuit Court to enjoin the district court criminal proceedings and also requested that the court issue a declaratory ruling that the ordinance in question was unconstitutional. After plaintiff was convicted of violating the ordinance, defendant moved for summary disposition in this case. Plaintiff filed a cross-motion for summary disposition. The trial court granted defendant's motion and denied plaintiff's motion. The court also denied defendant's request for sanctions. Plaintiff now appeals as of right and defendant cross appeals. We affirm.

In August 2000, plaintiff was at home with his father and brother when his father allegedly assaulted his brother. Plaintiff's brother called the police, who arrived a short time later and ordered plaintiff's father and brother out of the home. The officers also told plaintiff to exit the home, but he refused to comply. Instead, plaintiff, a law student at the time, demanded that the officers obtain a warrant before entering the home and cited case law in support his position. Plaintiff was later charged with violating Bloomfield Township Ordinance No. 137, § 16.01(a) (hereinafter § 16.01(a)), which prohibits a person from interfering with a police officer in the discharge of his duty.

After plaintiff was convicted by a jury of violating § 16.01(a) in the district court, the trial court in this case dismissed plaintiff's circuit court action, concluding that plaintiff's request for an injunction to enjoin the criminal case was moot. The court also held that plaintiff's challenges to the constitutionality of § 16.01(a) were barred by both collateral estoppel and res judicata because the issues were previously litigated, or could have been, in the district court. We agree that defendant was entitled to summary disposition.

This Court reviews a trial court's decision granting summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court did not specify under which subrule it granted defendant's motion. It appears that the court granted summary disposition under MCR 2.116(C)(7).

Summary disposition may be granted under MCR 2.116(C)(7) where an action is barred due to the disposition of the claim before commencement of the action, such as collateral estoppel or res judicata. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). The standard for reviewing a motion under MCR 2.116(C)(7) is as follows:

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

The trial court held that plaintiff's request for an injunction was moot after the district court criminal trial concluded in April 2002. As a general rule, courts will not address moot issues. *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998). "A case is moot when it presents only abstract questions of law that do not rest upon existing facts or rights. . . . An issue is deemed moot when an event occurs that renders it impossible for a reviewing court to grant relief." *Id.*

Because plaintiff filed this case primarily to enjoin the district court criminal proceedings, we agree that the action became moot once a judgment was entered in the district court. At that point, the circuit court could no longer enjoin prosecution of the district court matter. See *Kent Co Aeronautics Bd v Dep't of State Police*, 239 Mich App 563, 584; 609 NW2d 593 (2000), *aff'd sub nom, Byrne v State of Michigan*, 463 Mich 652 (2001). Plaintiff's remedy at that point was to appeal his criminal conviction. Plaintiff also requested that the trial court enjoin defendant from enforcing the ordinance against others in the future. But, while a court may still review a moot issue where it is one of public significance and the issue is likely to recur in the future, yet evade review, *People v Cannon*, 206 Mich App 653, 654; 522 NW2d 716 (1994); see also *Federated Publications, Inc v City of Lansing*, 467 Mich 98, 112; 649 NW2d 383 (2002), this was discretionary with the trial court. Because there was no longer an actual controversy involving plaintiff, we find the trial court did not err in declining to consider the matter. See *Smolen v Dahlmann Apartments, Ltd*, 127 Mich App 108, 120; 338 NW2d 892 (1983).

The trial court also held that summary disposition to defendant was warranted on the basis of collateral estoppel and res judicata because plaintiff's arguments challenging the constitutionality of the ordinance were raised and addressed in the district court proceedings. Collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties if the prior action resulted in a valid final judgment and the issue was actually and

necessarily determined in the prior matter. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996). The ultimate issue in the second case must be the same as that in the first proceeding. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The doctrine requires that the same parties must have had a full opportunity to litigate the issue in the prior proceeding, and there must be mutuality of estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995). "To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel." *Bd of Co Road Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994). If the same parties or their privies were not involved in both the prior litigation and the subsequent litigation, collateral estoppel is not available. *APCOA, Inc v Dep't of Treasury*, 212 Mich App 114, 120; 536 NW2d 785 (1995).

Collateral estoppel will only apply if the basis of the former judgment can be "clearly, definitely, and unequivocally ascertained." *Ditmore v Michalik*, 244 Mich App 569, 578; 625 NW2d 462 (2001). "Crossover estoppel, which involves the preclusion of an issue in a civil proceeding after a criminal proceeding and vice versa, is permissible." *Barrow v Pritchard*, 235 Mich App 478, 481; 597 NW2d 853 (1999).

The doctrine of res judicata is summarized in *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999), as follows:

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Eaton Co Bd of Co Rd Comm'rs v Schultz*, 205 Mich App 371, 375; 521 NW2d 847 (1994). A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Id.* at 375-376.

Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Gose v Monroe Auto Equipment Co*, 409 Mich 147, 160-163; 294 NW2d 165 (1980); *Sprague v Buhagiar*, 213 Mich App 310, 313; 539 NW2d 587 (1995).

On that legal basis, we agree that collateral estoppel applies to bar relitigation of plaintiff's arguments challenging the constitutionality of § 16.01(a). Plaintiff challenged the constitutionality of this ordinance in the district court case and, therefore, the same issue is involved in both cases. Additionally, the same parties are involved in both cases and there is mutuality of estoppel.

Pleadings filed by plaintiff in the district court disclose that he challenged the constitutionality of § 16.01(a) there, raising many of the same arguments that he subsequently raised in the circuit court. Plaintiff argues that he did not have a full and fair opportunity to litigate the constitutionality of the ordinance in the district court because the district court judge was not fair and impartial. Plaintiff, however, has not properly developed this argument on appeal. He merely refers this Court to a videotape and states, without any supporting argument, that he was denied a fair hearing. He has failed to support this issue with appropriate citation or

references to this record. Thus, we consider this issue abandoned. *Great Lakes Division of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 422; 576 NW2d 667 (1998). Nevertheless, we reviewed the videotape that plaintiff claims demonstrates that the district court judge was biased against him, and find no basis to conclude that defendant was denied a fair and impartial hearing.

Plaintiff argues that because the federal courts refused to intervene in this matter, collateral estoppel should not apply. The federal courts declined to exercise jurisdiction, deciding that the matter should be decided by the state courts. Although the federal courts declined to exercise jurisdiction, to the extent that plaintiff's constitutional challenges were decided in the state district court, relitigation of those same issues in this case was precluded by collateral estoppel.

In addition to collateral estoppel, res judicata applies as well. First, there is no dispute that the district court matter was decided on the merits. Second, plaintiff's present challenges to the constitutionality and validity of § 16.01(a) were raised and decided in the district court proceeding and, to the extent that plaintiff has raised additional arguments in this case, he was not precluded from raising those same arguments in the district court. Finally, both actions involved the same parties. Therefore, plaintiff's claims in this case are now barred by res judicata.

Plaintiff argues that a final judgment has not been entered in the district court proceedings, that the matter remains pending and, therefore, his claims are not barred. We disagree. Defendant submitted a copy of plaintiff's district court order of probation in support of its motion for summary disposition. Plaintiff asserts that the district court judge subsequently disqualified himself and that the case was thereafter transferred to the 18th District Court where his sentence was vacated and the matter remains pending. Even if a final sentence has not been entered in the district court matter, we are not persuaded that either res judicata or collateral estoppel may not apply. Plaintiff still stands convicted of violating § 16.01(a) and the district court's previous rulings, regarding the constitutionality of § 16.01(a), still stand as decisions on the merits.

Plaintiff relies on this Court's decision in *Jeffrey v Clinton Twp*, 195 Mich App 260; 489 NW2d 211 (1992), for the rule that he was required to seek a decision from the district court regarding the constitutionality of § 16.01(a) before he could file this action for equitable relief in the circuit court. Plaintiff's reliance on that case is misplaced. In *Jeffrey*, this Court held that the circuit court erred in issuing a permanent injunction enjoining the defendant from enforcing an ordinance against the plaintiffs. This Court held that the plaintiffs would not suffer an irreparable injury and had failed to show that they lacked an adequate remedy at law. *Id.* at 264-265. Because the plaintiffs had been charged with violating the ordinance and criminal proceedings were commenced, this Court held that the plaintiffs' challenges to the ordinance should be addressed in the criminal case only. *Id.* at 265-266. We do not read *Jeffrey* as holding that a party *must* request relief in the district court before seeking equitable or injunctive relief regarding the enforcement of a statute in the circuit court. The decision in *Jeffrey* instead provides that a court of equity will intervene to prevent the enforcement of a law "only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Id.* at 263-264. As in *Jeffrey*, plaintiff here failed to show that he lacked an adequate remedy at law; indeed, he was able to challenge the constitutionality of § 16.01(a) in the district court proceedings.

In sum, the trial court properly granted defendant's motion for summary disposition on the basis that plaintiff's circuit court action was in part moot and also because plaintiff's challenges to the validity of defendant's ordinance were barred by both res judicata and collateral estoppel. Thus, we need not consider the merits of plaintiff's arguments concerning the validity of the ordinance.

Plaintiff also argues that the trial court erred by denying his motion for sanctions under MCR 2.114(E) and (F). Plaintiff claims that he was entitled to sanctions because defendant's attorney misled the court by signing a pleading that was not well grounded in fact. Plaintiff presumably intended to move for sanctions under MCR 2.114(D) and (E). Sanctions are mandatory under MCR 2.114(D) if that subsection is violated. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). The trial court's ruling is reviewed for clear error. *Id.*

The trial court did not clearly err by denying plaintiff's motion. Defendant demonstrated that its attorney relied on the police reports of this incident when preparing the pleading in question. Because defense counsel was not involved in the criminal prosecution of plaintiff's father, counsel's reliance on the police reports was not unreasonable, even if testimony at plaintiff's father's trial later conflicted with those reports. Plaintiff failed to show that defense counsel did not make a reasonable inquiry into the facts before he signed the pleading in question. Accordingly, the trial court did not clearly err in denying the request for sanctions. *LaRose Market, Inc v Sylvan Center, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995).

On cross-appeal, defendant challenges the trial court's denial of its request for sanctions. Defendant argued below that plaintiff failed to make a reasonable inquiry into the merits of his lawsuit before filing it and, therefore, he was subject to sanctions under MCR 2.114(E) and (F), and MCL 600.2591. We note that before plaintiff filed this lawsuit, he filed an action in federal court and also challenged the validity of the ordinance in the district court criminal prosecution, all unsuccessfully. He also filed interlocutory applications for leave to appeal the district court's rulings with this Court and our Supreme Court, which were denied. Even in light of this history, the trial court denied defendant's request for sanctions. While the trial court did not elaborate on this decision, considering the circumstances of this case we find the trial court did not clearly err in denying defendant's request for sanctions.

Affirmed.

/s/ Joel P. Hoekstra
/s/ David H. Sawyer
/s/ Hilda R. Gage