

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GEORGE H. YOUNG,

Plaintiff-Appellant,

v

OAKLAND COUNTY, OAKLAND COUNTY  
BOARD OF COMMISSIONERS, OAKLAND  
COUNTY DRAIN COMMISSIONER'S OFFICE  
and VILLAGE OF HOLLY,

Defendants-Appellees.

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UNPUBLISHED

October 19, 2010

No. 293066

Oakland Circuit Court

LC No. 2008-094214-CZ

Before: ZAHRA, P.J., and TALBOT and METER, JJ.

PER CURIAM.

George Young contests the trial court's orders granting summary disposition<sup>1</sup> in favor of the village of Holly, Oakland County, Oakland County Board of Commissioners, and the Oakland County Drain Commissioner's Office in this dispute pertaining to the flooding of Young's property following the setting of the historic level for Bush Lake and the alleged interference with the lake level by the village of Holly. We affirm.

We review a trial court's determination to grant or deny summary disposition de novo.<sup>2</sup> Similarly, application of the doctrine of res judicata is also reviewed de novo as a matter of law.<sup>3</sup> Summary disposition pursuant to MCR 2.116(C)(7) is appropriate where a claim is barred by prior judgment.<sup>4</sup> In reviewing motions under MCR 2.116(C)(7), we will accept plaintiff's well-pleaded factual allegations as true unless contradicted by the parties' supporting affidavits,

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<sup>1</sup> MCR 2.116(C)(7).

<sup>2</sup> *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004).

<sup>3</sup> *Banks v LAB Lansing Body Assembly*, 271 Mich App 227, 229; 720 NW2d 756 (2006).

<sup>4</sup> *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 686-687; 762 NW2d 529 (2008).

depositions, admissions, or other documentary evidence.<sup>5</sup> We will also construe the parties' submissions in the light most favorable to the non-moving party.<sup>6</sup>

This litigation arises from Young's allegations that his property on Bush Lake was flooded by the village of Holly's actions that artificially raised the lake level and that setting the lake level at 913.6 feet above sea level was a constitutional taking by the Oakland County litigants.<sup>7</sup> Young initially contends that the trial court erred in granting summary disposition to Oakland County based on the doctrine of res judicata. Specifically, Young asserts that the previous case<sup>8</sup> did not result in a final judgment and that the instant case does not involve the same parties or their privies as the previous litigation. The doctrine of res judicata is generally employed to prevent multiple suits litigating the same cause of action. "The doctrine bars a subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first."<sup>9</sup>

In arguing that the first action was not decided on the merits, Young relies on a case decided by the Michigan Supreme Court.<sup>10</sup> The cited case addressed whether an issue was barred by collateral estoppel. Our Supreme Court concluded that because the rationale used by the circuit court was never reached by this Court in affirming a grant of summary disposition the circuit court's judgment is not given conclusive effect.<sup>11</sup> Specifically, the Court stated:

A judgment affirmed on appeal has conclusive effect, but if the appellate court affirms on grounds that differ from those relied upon by the lower court, the conclusiveness of the judgment as res judicata and as collateral estoppel are governed by the appellate decision. Thus if the trial court rests its judgment on two grounds, each of which is independently adequate to support it, the judgment is conclusive as to both; but i[f] the appellate court affirms on one ground without passing on the other, the second ground is no longer conclusively established under the collateral estoppel doctrine.<sup>12</sup>

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<sup>5</sup> *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

<sup>6</sup> *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998).

<sup>7</sup> Hereinafter, referred to jointly as Oakland County.

<sup>8</sup> *Young v Oakland Co Drain Comm'rs Office*, LC No. 2006-076690-CZ.

<sup>9</sup> *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 212-213; 699 NW2d 707 (2005).

<sup>10</sup> *Amalgamated Transit Union, Local 1564, AFL-CIO v Southeastern Michigan Transp Auth*, 437 Mich 441; 473 NW2d 249 (1991).

<sup>11</sup> *Id.* at 453-454.

<sup>12</sup> *Id.*, quoting 1B Moore, Federal Practice, ¶ 0.416[2], p 518.

In the previous action<sup>13</sup>, Oakland Circuit Court Judge Fred M. Mester granted summary disposition based on MCR 2.116(C)(8) and (C)(10). This Court affirmed Judge Mester, but did so on an alternative basis under MCR 2.116(C)(8), and did not address the grant of summary disposition under MCR 2.116(C)(10).<sup>14</sup> Although the instant case involves an appellate court affirming a trial court's decision on one ground without addressing the alternative basis for granting summary disposition, Young mistakenly relies on the cited case, which is distinguishable, because the cited case is applicable in the context of collateral estoppel, not res judicata. This Court's decision in the previous appeal did not affect Judge Mester's conclusion that there existed no question of material fact that the normal and historic level of the lake was 913.6 feet and his grant of summary disposition pursuant to MCR 2.116(C)(10) constituted a judgment on the merits.<sup>15</sup>

To satisfy the same parties requirement, the litigants "to the second action need be only substantially identical to [those] in the first action, in that the rule applies to both parties and their privies."<sup>16</sup> A finding of privity requires "a substantial identity of interests" and a "relationship in which the interests of the nonparty [were] presented and protected by the parties in the litigation."<sup>17</sup> Young contends that the Oakland County Drain Commissioner's Office, which was a party in the preceding action, is not in privity with Oakland County and the Oakland County Board of Commissioners because it is a separate governmental entity and that Oakland County, not the Oakland County Drain Commissioner's Office, has eminent domain power. In support of his position, Young notes that the lack of authority of the Oakland County Drain Commissioner's Office was the basis on which this Court affirmed Judge Mester's dismissal of the prior action.<sup>18</sup>

The lower court record demonstrates that Judge Mester also dismissed Young's claim<sup>19</sup> finding a question of fact did not exist regarding whether a taking had occurred because the historic lake level was 913.6 feet above sea level, which was the same as the previously court ordered normal lake level. In the current litigation, the same evidence and allegations are presented. Young groups the Oakland County litigants together in his allegations and pleadings and, under the facts presented, the various Oakland County parties have a substantial identity of interests. In the preceding action, the Oakland County Drain Commissioner's Office argued that

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<sup>13</sup> *Young v Oakland Co Drain Comm'rs Office*, LC No. 06-076690-CZ.

<sup>14</sup> *Young v Oakland Co Drain Comm'rs Office*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2008 (Docket No. 277259).

<sup>15</sup> See, e.g., *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 510; 686 NW2d 770 (2004) ("[A] summary disposition ruling is the procedural equivalent of a trial on the merits that bars relitigation on principles of res judicata.").

<sup>16</sup> *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 12; 672 NW2d 351 (2003).

<sup>17</sup> *ANR Pipeline Co*, 266 Mich App at 214.

<sup>18</sup> *Young v Oakland Co Drain Comm'rs Office*, unpublished opinion per curiam of the Court of Appeals, issued June 17, 2008 (Docket No. 277259).

<sup>19</sup> MCR 2.116(C)(10).

a taking had not occurred, which protected the interests of Oakland County and the Oakland County Board of Commissioners. Because both actions involve the same parties or their privies, the second element of res judicata is satisfied.

The third requirement for application of res judicata is that “the matter in the second case was, or could have been, resolved in the first.”<sup>20</sup> A transactional test is used to determine if the matter could have been resolved in the first case, which “provides that the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief.”<sup>21</sup> “Whether a factual grouping constitutes a ‘transaction’ for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in time, space, origin or motivation . . . .”<sup>22</sup>

The only difference between the instant case and the previous cause of action is that Young has added an inverse condemnation claim. The condemnation claim relies on the same operative facts as the preceding action, namely: that the setting of the lake level at 913.6 feet constitutes a taking of Young’s property because of the resultant flooding. The other counts contained in Young’s complaint are identical to those raised in the earlier action. As a result, the current case was, or could have been resolved, in the previous action. Young asserts that his claim is based on the natural lake level, not the historic level, and that the earlier action did not address the natural lake level. But, as recognized by the trial court, this was a distinction to be drawn before Judge Mester in the preceding action and in the appeal of that action. It does not affect our conclusion that the third requirement for the application of res judicata has been satisfied. Because the trial court did not err in granting summary disposition in favor of Oakland County on the basis of res judicata, this Court need not address Young’s claim of error regarding the trial court’s grant of summary disposition on the alternative basis of stare decisis.

Young also argues that the trial court erred in granting summary disposition in favor of the village of Holly based on res judicata. Young contends that because the previous case involving the village of Holly,<sup>23</sup> in which plaintiff was an intervening party was dismissed without prejudice, it did not constitute adjudication on the merits. In his earlier action, Young asserted against the village of Holly claims of nuisance, negligence and trespass. All of his claims against the village of Holly were dismissed based on governmental immunity. Young subsequently stipulated to the dismissal without prejudice of the remainder of his claims against the other parties in the earlier case. When Young appealed the order dismissing his claims against the village of Holly, this Court rejected the appeal because the dismissal without prejudice did not constitute a final order that could be appealed as of right. Young did not pursue the appeal, as he did not subsequently file a delayed application for leave to appeal or

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<sup>20</sup> *Washington v Sinai Hosp of Greater Detroit* 478 Mich 412, 420; 733 NW2d 755 (2007).

<sup>21</sup> *Id.* (citation omitted).

<sup>22</sup> *Id.* (citation omitted).

<sup>23</sup> *Okonski v The Village of Holly*, LC No. 2004-057137-CZ.

attempt to remedy this failure. Young's motion seeking to reinstate his case, alleging a constitutional takings claim against the village of Holly, was denied.

Although Young was unable to successfully navigate the appellate process or to reinstate his claim in the previous action, this does not alter the fact that the order granting the village of Holly summary disposition on the basis of governmental immunity constituted an adjudication on the merits of Young's claims against the village of Holly.<sup>24</sup> Additionally, both actions involved the same parties or their privies.

Addressing the third element of res judicata, the allegations in the current litigation could have been resolved in the previous case. In the earlier litigation, Young alleged that the village of Holly interfered with the weir in order to artificially raise the lake level, which resulted in the flooding of his property. This constitutes the same set of facts that Young alleges against the village of Holly in this case. The only discernable difference is that in the current case Young has labeled his claim as inverse condemnation. Under the transactional test, because the same set of operative facts gives rise to Young's assertion for relief, the claims in the instant case could have been resolved in the previous litigation. As all of the elements of res judicata are fully satisfied, the trial court did not err by granting summary disposition to the village of Holly.

Affirmed.

/s/ Brian K. Zahra  
/s/ Michael J. Talbot  
/s/ Patrick M. Meter

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<sup>24</sup> See, e.g., *Mable Cleary Trust*, 262 Mich App at 510.