

STATE OF MICHIGAN
COURT OF APPEALS

JIRIES ABU-JOUDEH,

Plaintiff-Appellant,

v

AWNI ABU-JOUDEH and FADIA ABU-
JOUDEH,

Defendants-Appellees.

UNPUBLISHED

March 29, 2012

No. 301305

Macomb Circuit Court

LC No. 2010-003149-CH

Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

In this real-property title dispute, plaintiff Jiries Abu-Joudeh appeals as of right the trial court's order granting summary disposition under MCR 2.116(C)(7) in favor of defendants Awni Abu-Joudeh and Fadia Abu-Joudeh. Because res judicata bars plaintiff's claim, we affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises from a title dispute over land commonly known as 28945 Utica Road, Roseville, Michigan ("the Property"). On March 16, 1984, Jiries entered into a land contract with Milton and Hazel Ruehle to purchase the Property.¹ On January 18, 1995, Awni (Jiries's brother) and Fadia purchased the Property from the Ruehles² subject to Jiries's land contract. Thirteen years later, Jiries and Awni engaged in litigation over the Property.

A. OTHER LAWSUITS INVOLVING THE PARTIES

1. Macomb Circuit Court Case, Docket No. 08-1243-CH.

On March 19, 2008, Awni and his two sons, Pierre Abu-Joudeh and Patrick Abu-Joudeh, sued Jiries in the circuit court. The complaint alleged that Jiries owed them money on the

¹ According to the land contract, payment of "the entire purchase money and interest" was to be "fully paid" within five years from the date of execution of the contract.

² According to the pleadings, Mr. Ruehle died in 1994.

Reuhle land contract and requested a court judgment ordering that Jiries either pay or be evicted from the Property. Jiries filed a counterclaim on April 18, 2008, alleging slander of title and conversion of property and requesting that the court set aside or nullify any security interest that Awni had in the Property.

On February 13, 2009, Jiries moved for summary disposition. On April 20, 2009, the circuit court denied Jiries's motion and gave Awni and his sons 28 days to file an amended complaint, which they did on May 22, 2009. The amended complaint claimed that Jiries breached several contracts, including the land contract he had on the Property, and also alleged unjust enrichment. The amended complaint's request for relief included compensatory damages or, alternatively, title to the Property.

On June 19, 2009, Jiries moved to quash and for summary disposition and filed a second counterclaim. The counterclaim alleged abuse of process; Jiries argued that Awni's claims were clearly barred by both the statute of limitations and the Michigan usury statutes and that Patrick and Pierre had no legal basis for their claims. On August 17, 2009, the circuit court granted Jiries's motion for summary disposition and dismissed Awni's complaint in its entirety.³ On November 24, 2009, the circuit court held a bench trial on Jiries's counterclaim for abuse of process, and the court found no cause for action. The circuit court entered a final judgment on December 18, 2009, and closed the case.

2. 39th District Court Case, Docket No. 10-327 SP

On January 28, 2010, Awni filed a complaint for possession after land contract forfeiture against Jiries in the 39th District Court. The district court ordered a stay of proceedings pending a motion for clarification in the prior litigation and, if applicable, an action for quiet title by Jiries. On May 3, 2010, a motion for clarification of prior orders was filed in the prior action, No. 08-1243-CH. On May 20, 2010, Judge Donald Miller entered an order clarifying that he had not made a specific ruling regarding title to the Property. Jiries then filed this action for quiet title. Awni's complaint for possession after land contract forfeiture remains pending in the district court.

B. CURRENT LAWSUIT

On July 27, 2010, Jiries filed the present action in the circuit court, seeking quiet title to the Property.⁴ Jiries argued that he had paid defendants for the Property, that Awni and Fadia held the Property in trust for him and were compensated for acting as trustees, that Awni and Fadia were estopped from claiming ownership of the Property, that Awni and Fadia's claim to

³ It is not clear from the record what Jiries argued in his motion for summary disposition or what the circuit court's reasoning was in granting the motion. However, it appears that the previous claims were dismissed because they were barred by the statute of limitations.

⁴ This case was assigned to Judge Miller, who also presided over the prior circuit-court action.

the Property was void based on the prior lawsuit, and that he had possessed the property since 1984.

In lieu of answering Jiries's complaint, Awni and Fadia moved for summary disposition under MCR 2.116(C)(7) on August 25, 2010. They argued that Jiries's claim was barred by res judicata because a plaintiff is barred from bringing a claim that was or could have been resolved in a previous case and Jiries could have brought an action for quiet title in the previous litigation. Awni and Fadia also argued that MCR 2.203, which addresses compulsory joinder, barred Jiries's claim because Jiries was required to join every claim that arose out of the same transaction or occurrence as his original claim and his quiet-title claim arose out of the same transaction or occurrence as his slander-of-title counterclaim in the previous litigation.

On October 4, 2010, the circuit court held a hearing on Awni and Fadia's motion for summary disposition and granted the motion.⁵ The circuit court denied Jiries's motion for reconsideration on November 3, 2010.

II. ANALYSIS

Jiries argues that the trial court erred in granting Awni and Fadia's motion for summary disposition under MCR 2.116(C)(7) because his current action for quiet title to the Property is not barred by res judicata or compulsory joinder. We disagree.

This court reviews de novo a trial court's grant of summary disposition under MCR 2.116(C)(7). *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 417; 733 NW2d 755 (2007). A court may grant summary disposition under MCR 2.116(C)(7) when a claim is barred because of a prior judgment. *1300 Lafayette East Coop, Inc v Savoy*, 284 Mich App 522, 524; 773 NW2d 57 (2009). In reviewing a grant of summary disposition under MCR 2.116(C)(7), this Court considers the pleadings and any other documentary evidence in the light most favorable to the nonmoving party. *Zwiers v Grownney*, 286 Mich App 38, 42; 778 NW2d 81 (2009). In addition, whether a claim is barred by res judicata is a question of law that this Court reviews de novo. *Washington*, 478 Mich at 417.

The purpose of the doctrine of res judicata is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication, that is, to foster the finality of litigation." *Begin v Mich Bell Tele Co*, 284 Mich App 581, 599; 773 NW2d 271 (2009).

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. The burden of establishing the applicability of res judicata is on the party asserting the doctrine. [*Richards v*

⁵ The trial court did not make clear whether its ruling was on the basis of res judicata, compulsory joinder, or both.

Tibaldi, 272 Mich App 522, 531; 726 NW2d 770 (2006) (internal citations omitted).]

With respect to the first and second elements of res judicata, the prior action, Macomb Circuit Court Case No. 08-1243-CH, was decided on the merits, and the judgment is final.⁶ Specifically, the circuit court granted Jiries's motion for summary disposition and dismissed Awni's complaint in its entirety. And, in a bench trial, the circuit court found no cause of action on Jiries's abuse-of-process counterclaim. No other issues remained. And neither party appealed.

With respect to the third element, "Michigan courts have broadly applied the doctrine of res judicata" and 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." *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). "The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence is essential to the maintenance of the two actions." *Schwartz v City of Flint*, 187 Mich App 191, 194-195; 466 NW2d 357 (1991). Even if based on different kinds or theories of relief, the transactional test is satisfied if a single group of operative facts gives rise to the claimed relief. *Washington*, 478 Mich at 420. The factual grouping is analyzed under a pragmatic approach. *Id.* A court should consider whether the facts are related in time, space, origin, or motivation. *Id.*

Here, we find that the third element of res judicata has been satisfied because the current claim could have been decided in the previous litigation. In Count I of his amended complaint in the previous litigation, Awni alleged that Jiries breached his land contract on the Property by failing to pay the balance of \$40,974.17 due to Awni on December 17, 1995. Awni then requested the balance owed plus interest or, alternatively, title to the property. This claim from the previous litigation and Jiries's current claim for quiet title both involve the exact same issue, rely on the same evidence, and arise from the same transaction or occurrence—the status of Jiries's land contract on the Property and, by extension, what interest, if any, Jiries and Awni have in the Property. In the previous litigation, Jiries had the opportunity to file a counterclaim for quiet title. In fact, Jiries did file what was essentially a counterclaim for quiet title with his "slander of title" claim. However, Jiries's subsequent counterclaim for abuse of process superseded the slander-of-title claim. See MCR 2.118(A)(4). Jiries's current action for quiet title and Count I of Awni's amended complaint both involve the issue of who has an interest in the Property.⁷

With regard to the fourth element of res judicata, Jiries claims that the parties are not the same because Fadia was not a party to the prior action. The fourth element is satisfied if both

⁶ Although Jiries argues that the first element is not satisfied because the issue in the current action was not decided on the merits in the prior action, his argument is misguided, as it is relevant only to the third element of res judicata.

⁷ Although Jiries argues that his interest in the Property could not have been resolved in the prior action because Fadia was not a party in that case, he fails to explain why he could not have added her as a counterdefendant.

actions involved the same parties or their privies. *Richards*, 272 Mich App at 531. Privity requires “a substantial identity of interests and a working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation.” *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 13; 672 NW2d 351 (2003). Privity includes a mutual relationship to the same right of property. *Phinisee v Rogers*, 229 Mich App 547, 553; 582 NW2d 852 (1998). Here, both the current and prior action involved the same parties or their privies. Specifically, Awni and Jiries were participants in the previous litigation. And, there is privity between Awni and Fadia because Fadia’s interest with respect to the Property is identical to Awni’s interest; they are married, bought the Property jointly, and hold it as tenants by the entirety. See *id.*; *Tkachik v Mandeville*, 487 Mich 38, 46; 790 NW2d 260 (2010) (“[O]ne tenant by the entirety has no interest separable from that of the other.”). Moreover, the purpose of the same-party requirement is to ensure that the interests of the party absent from the previous litigation were adequately protected. See *Peterson*, 259 Mich at 13. As Awni and Fadia are asserting res judicata, Fadia is presumably satisfied that her interests were represented and protected in the previous litigation.

Accordingly, res judicata bars Jiries’s quiet-title action because all four elements of the doctrine are satisfied.

Awni and Fadia also argue that Jiries’s claim is barred by the doctrine of compulsory joinder. Because we conclude that Jiries’s claim is barred by res judicata, we need not address whether his claim is also barred by the doctrine of compulsory joinder.

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher