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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

LIEBOVICH AND WEBER, P.C.,)	Appeal from the Circuit Court
)	of Winnebago County.
Plaintiff-Appellant,)	
)	
v.)	Nos. 08—P—383
)	09—SC—2958
)	
DENNIS M. RUETTEN,)	Honorable
)	Gwyn Gulley,
Defendant-Appellee.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Schostok concurred in the judgment.

ORDER

Held: Where court had already determined reasonable attorney fees in a probate action, plaintiff was barred by *res judicata* from re-litigating fee issue in a subsequent small claims action; however, *res judicata* did not preclude defendant from seeking reimbursement from plaintiff for earlier overpayment of attorney fees.

This appeal stems from an order for reimbursement for overpayment of attorney fees. Plaintiff, Liebovich & Weber, P.C., represented defendant, Dennis M. Ruetten, in a petition for guardianship of an estate in probate court. At the end of that representation, plaintiff petitioned the probate court for attorney fees and was awarded what the trial court determined to be reasonable fees of \$15,000. Plaintiff actually had already received from defendant \$18,000 in

fees for representing defendant in the petition for guardianship--3,000 through a retainer agreement and \$15,000 through a later payment. After the appeal period passed on the probate court's fee determination, plaintiff filed a small claims action for additional fees it alleged were due under the retainer agreement between plaintiff and defendant. The trial court granted defendant's motion to dismiss the action for additional fees in small claims court, finding the determination as to reasonable fees by the probate court to be *res judicata*. Plaintiff appealed from the trial court's order granting defendant's motion to dismiss, and we affirmed the trial court's ruling in a previous order. See *Liebovich & Weber, P.C. v. Ruetten*, No. 2—10—0023 (November 2, 2010) (unpublished order under Rule 23). Defendant later filed a motion seeking reimbursement of \$3,000 for the overpayment of fees to plaintiff, and the trial court granted this motion. Plaintiff now appeals from the order for reimbursement, again raising the argument that the small claims suit is not barred by *res judicata*. In the alternative, plaintiff argues that the reimbursement order is in error because it is a recalculation of fees and is barred by *res judicata*. For the following reasons, we reject both contentions.

I. BACKGROUND

Defendant hired plaintiff to represent him in a guardianship action. At the beginning of this representation, defendant signed a retainer agreement and paid plaintiff \$3,000. After the representation ended, plaintiff petitioned the probate court for fees from the estate and was awarded \$15,000 as the total reasonable fee for his services. Defendant paid plaintiff \$15,000. After the appeal period on the probate order had passed, plaintiff filed a small claims action for an additional \$8,764.01 in fees due under the retainer agreement. The trial court dismissed this claim under the theory of *res judicata* because the amount of fees due for the representation had already been determined by the probate court. Plaintiff contested this ruling in another appeal,

and we affirmed the judgment of the trial court. See *Liebovich & Weber, P.C. v. Ruetten*, No. 2–10–0023 (November 2, 2010) (unpublished order under Rule 23). Defendant then filed a motion seeking reimbursement of the \$3,000 overpayment, because plaintiff had received \$18,000 in fees, \$3,000 more than what the probate court determined to be reasonable. The trial court granted the motion for reimbursement, and plaintiff appeals that order.

On appeal, plaintiff frames the issue as whether *res judicata* bars the small claims action and contends that the claim is not barred because the causes of action and parties differ. Plaintiff argues that if *res judicata* does bar the action, then the reimbursement order should be barred under the same theory. Defendant responds that the trial court properly applied *res judicata* to bar the small claims action. Furthermore, defendant argues that the order for reimbursement does not change the fees due, but rather asks the court to enforce the fee order.

II. ANALYSIS

The issues presented in this case are (1) does the doctrine of *res judicata* bar a small claims action for attorney fees after reasonable fees have been determined by the probate court and (2) whether the doctrine of *res judicata* prevents the trial court from ordering plaintiff to reimburse defendant for the fees paid in excess of those ordered by the probate court. We answer the first question in the affirmative but the second in the negative.

A. THE SMALL CLAIMS ACTION

We begin by noting that in a previous appeal (See *Liebovich & Weber, P.C. v. Ruetten*, No. 2–10–0023 (November 2, 2010) (unpublished order under Rule 23)), the parties fully briefed and argued this issue on these same facts. In that case, plaintiff argued that *res judicata* did not apply and defendant’s motion to dismiss should not have been granted because the causes of

action and parties differ. That argument was rejected, and the ruling of the trial court affirmed. In the case at bar, plaintiff makes the same arguments.

A motion to dismiss is reviewed *de novo* because it is simply an application of law to facts and does not involve weighing evidence or determining the credibility of witnesses. *Toombs v. City of Champaign*, 245 Ill. App. 3d 580, 583 (1993). All pleadings and documents are taken in the light most favorable to the non-moving party. *Toombs*, 245 Ill. App. 3d at 583. An appellate court may affirm dismissal of a complaint on any basis in the record. *Golf v. Henderson*, 376 Ill. App. 3d 271, 275 (2007).

Res judicata is designed to promote judicial economy by requiring parties to litigate all issues arising out of the same set of facts and to prevent parties from having to re-litigate what is essentially the same case. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 319 (1999). A final judgment on the merits prevents parties or their privies from re-litigating issues that were or could have been raised in a previous action. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Matters that could have been decided are barred from being litigated in a subsequent suit even if they were not actually raised. *River Park, Inc.* 184 Ill. 2d at 302. Where a final judgment on the merits has been issued by a court of competent jurisdiction, there is an identity of parties or their privies, and an identity of causes of action exists, *res judicata* will bar a subsequent action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008). All three elements must be present, or *res judicata* will not bar the action. *River Park, Inc.*, 184 Ill. 2d at 302.

Applying these well-settled legal principles to the facts of this case, we find that *res judicata* bars plaintiff's small claims action. Plaintiff does not contend that the fee order by the probate court is not a final judgment on the merits, and we conclude that it is. Our analysis therefore begins by determining if there is an identity of causes of action.

Illinois courts use the transactional test to determine if an identity of causes of action exists. *River Park, Inc.*, 184 Ill. 2d at 309-10. Under the transactional test, separate claims are considered part of the same cause of action if they arise from a common core of operative facts. *Lane v. Kalcheim*, 394 Ill. App. 3d 324, 330 (2009). Plaintiff represented defendant in only one transaction, and all petitions and claims for fees before this court originated from that transaction. Therefore, these claims arise from a single group of operative facts and are barred under the transactional test. In addition, the probate court determined what fees were reasonable for that transaction, and all additional claims for fees could have and should have been brought in the probate court at that time. Because *res judicata* applies not only to matters that were litigated but also to those that could have been, it is of no consequence that the probate court did not consider the retainer agreement, contrary to plaintiff's argument. *River Park, Inc.*, 184 Ill. 2d at 302. Quite simply, plaintiff never explains why it could not have raised any issue concerning the retainer agreement before the probate court.

Next, it is necessary to determine whether there is an identity of parties or their privies. Determining the existence of privity requires an examination of the facts of each case. *Apollo Real Estate Investment Fund, IV, L.P. v. Gelber*, 403 Ill. App. 3d 179, 190 (2010). The nominal identity of the parties does not determine privity; rather, privity is determined by an identity of interest between the parties. *In Re Marriage of Mesecher*, 272 Ill. App. 3d 73, 77 (1995). On the facts at hand, the estate at issue in the probate court and defendant in the current case have the same interest. The interest is the same because any amount levied against one necessarily affects the amount the other is required to pay. *Illinois Non-Profit Risk Management Association v. Human Services Center of Southern Metro East*, 378 Ill. App. 3d 713, 721 (2008). In other words, both had an interest to minimize the amount of attorney fees owed plaintiff. Because the

interest of the estate in the first petition for fees is the same as the interest of defendant in this case, privity exists and the third element of *res judicata* is met.

Since all elements of *res judicata* are present we find that plaintiff's request for relief in this case is barred. However, principles of equity guide the application of *res judicata*, so we must consider whether an injustice would result from applying it here. *Borcherding v. Anderson Remodeling Co.*, 253 Ill. App. 3d 655, 662 (1993). Plaintiff does not explain why an application of the principles of *res judicata* in this case would result in an injustice. Indeed, since plaintiff has already been awarded reasonable fees by the probate court, we need not consider this argument further. *First National Bank of LaGrange v. Lowery*, 375 Ill. App. 3d 181, 208 (2007).

In conclusion, all elements of *res judicata* have been met, and no inequity would result from applying it in this case. The trial court properly applied *res judicata* to bar the small claims action, and we affirm the ruling of the trial court. This mirrors our ruling and reasoning in Case No. 10-0023.

B. THE REIMBURSEMENT ORDER

Plaintiff briefly contends that if *res judicata* bars a subsequent claim for fees, then it also prevents the trial court from ordering reimbursement for overpayment of fees. We reject this argument because the order for reimbursement enforces the probate court's determination of what a reasonable fee is for plaintiff's services and prevents plaintiff from retaining fees beyond the amount allowed. See *Cascade Chemical Coatings, Inc. v. Wellco Chemical Products Co.*, 15 Ill. App. 3d 1056, 1057 (1973) (allowing enforcement of earlier judgment in subsequent action even though earlier action was *res judicata* as to the underlying merits of the controversy). The order does not recalculate the fees owed to plaintiff, as plaintiff contends. Under the probate order, plaintiff is to receive \$15,000 because that is the total reasonable fee for its services. Any

amount beyond that is excessive and therefore improper. See *Computer Sales Corp. v. Rousonelos Farms, Inc.*, 190 Ill. App. 3d 388, 394 (1989). Accordingly, the ruling of the trial court ordering plaintiff to reimburse defendant \$3,000 for excess fees is affirmed.

III. CONCLUSION

In light of the foregoing, the judgment of the circuit court of Winnebago County is affirmed.

Affirmed.