

NOTICE

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2016 IL App (4th) 150137-U

NO. 4-15-0137

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

February 19, 2016
Carla Bender
4th District Appellate
Court, IL

THOMAS POWERS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Schuyler County
S.A. GODINEZ, ALYSA WILLIAMS-SCHAFFER, and)	No. 14L3
DR. MAUREEN TWEEDY,)	
Defendants-Appellees.)	Honorable
)	Scott J. Butler,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not err in finding plaintiff's civil rights complaint barred by *res judicata* and granting defendants' motions to dismiss.

¶ 2 In January 2013, the United States District Court for the Central District of Illinois dismissed plaintiff Thomas Powers' civil rights lawsuit and entered judgment in favor of all named defendants, including the defendants named in this appeal. Plaintiff appealed to the Seventh Circuit Court of Appeals. The appeal was dismissed on February 7, 2014, because plaintiff did not pay the filing fee. On February 21, 2014, plaintiff filed the civil rights complaint at issue here, naming the same defendants and making the same claims rejected by the federal court. In February 2015, the trial court found plaintiff's claims were barred by *res judicata* and granted defendants' motions to dismiss. On appeal, plaintiff alleges the trial court erred when it (1) denied his civil rights complaint based on *res judicata* and (2) relied upon the Illinois

Sexually Violent Persons Commitment Act (Commitment Act) (725 ILCS 207/1 to 99 (West 2014)) because his case related to whether the Illinois Department of Corrections (DOC) personnel were at fault in failing to diagnose and treat his paraphilia. We affirm.

¶ 3

I. BACKGROUND

¶ 4

A. Plaintiff's Federal Court Civil Rights Complaint

¶ 5

In November 2012, plaintiff filed a *pro se* section 1983 complaint (42 U.S.C. § 1983 (2012)) in the United States District Court for the Central District of Illinois against more than 20 defendants, including S.A. Godinez, Alysa Williams-Schaffer, and Dr. Maureen Tweedy, *i.e.*, the named defendants in the case before us. *Powers v. IDOC Directors*, No. 12-CV-3304 (C.D. Ill. Jan. 9, 2013). Plaintiff alleged current and former DOC directors, medical directors, clinical directors, psychologists, and psychiatrists were deliberately indifferent to his mental illness of "paraphilia, not otherwise specified nonconsent and personality disorder, not otherwise specified with antisocial features." Plaintiff alleged defendants failed to diagnose and treat his paraphilia because of the expense. He claimed such failure caused him mental, emotional, and physical injuries and interfered with his liberty interests. According to plaintiff, defendants were responsible for his medical needs while incarcerated but failed to treat his disorder during his three DOC incarcerations dating back to 1989. Even though plaintiff allegedly received mental-health care while incarcerated, he was not diagnosed with "paraphilia, not otherwise specified, non-consent" until June 2012. According to plaintiff, over the course of 25 years, defendants' deliberate indifference caused him to commit crimes, lose his wife, daughter, home, and job, and ultimately be detained pursuant to the Commitment Act (*In re Thomas Powers*, 2012 MR 0000419 (Winnebago County)).

¶ 6

As to the named defendants in the case *sub judice*, plaintiff alleged the following

in his federal court case: (1) Godinez failed to establish rules and implement policies for the provision of mental-health services "based on expense to treat," which "facilitated" the failure to diagnose and treat his paraphilia until June 2012; (2) Williams-Schaffer was responsible for providing mental-health treatment to him but failed to diagnose and treat his paraphilia; and (3) Tweedy was one of the mental-health treating physicians while plaintiff was housed at Danville Correctional Center from May 2011 until June 2012 but failed to diagnose and treat him for paraphilia. Plaintiff further alleged all named defendants conspired to deprive him of constitutionally adequate mental-health care by failing to diagnose and treat his condition.

¶ 7 In January 2013, the federal district court dismissed plaintiff's action for failure to state a claim upon which relief can be granted and entered judgment in favor of all the defendants. The district court first concluded the two-year statute of limitations barred plaintiff's claims arising from any failure to treat his mental disorder before fall 2010. In addition, the court concluded:

"However, the bigger problem with [p]laintiff's claim is that the facts he alleges do not plausibly suggest that any of the [d]efendants were deliberately indifferent to [p]laintiff's serious mental illness. Plaintiff's factual allegations do not allow an inference that any of the [d]efendants knew that [p]laintiff had been diagnosed with a paraphilia disorder or knew that such a disorder amounted to a serious mental illness for which treatment was required. Plaintiff's imprisonment alone did not imply that he had a serious mental illness needing treatment. He was not imprisoned because of a mental disorder. He was imprisoned to

serve a sentence for attempted aggravated criminal sexual assault. *People v. Powers*, [2011 IL App (2d) 090292, ¶ 2,] 961 N.E.2d 906, 908 []. No plausible inference arises that [p]laintiff informed any of the [d]efendants during his imprisonment that he suffered from a serious mental illness, needed mental health treatment, or requested to participate in the mental health treatment programs available in prison, such as the sex offender treatment program.

The fact that an expert in [p]laintiff's civil commitment proceedings has opined that [p]laintiff meets the statutory definition of a sexually violent person does not create a plausible inference that [d]efendants were deliberately indifferent to [p]laintiff's serious mental illness during his imprisonment. In short, no plausible inference arises that any of the [d]efendants were aware that [p]laintiff had a serious mental illness during his imprisonment, much less that any [d]efendants disregarded that need." *Powers*, No. 12-CV-3304 (C.D. Ill. Jan. 9, 2013).

¶ 8 In July 2013, the district court denied plaintiff's postjudgment motions. In doing so, the court pointed out exhibits tendered by plaintiff with his postjudgment motions and proposed amended complaint showed he had received mental-health treatment during his incarceration, and he repeatedly refused sex-offender treatment during that time because he asserted he had not committed sex crimes.

¶ 9 Plaintiff appealed the district court's order to the United States Court of Appeals for the Seventh Circuit in case No. 13-2579. Two months later, the district court denied

plaintiff's motion for leave to appeal *in forma pauperis* because the court did not see "an arguable good faith basis for appeal." The court advised plaintiff he could renew his petition to proceed *in forma pauperis* with the court of appeals, and plaintiff did so. In November 2013, the Seventh Circuit denied plaintiff's petition to proceed *in forma pauperis* and his "request for recruitment of counsel." The court of appeals also denied plaintiff's motion for reconsideration and ordered him to pay the required filing fee by a certain date or risk dismissal of his appeal. In January 2014, the appeals court denied plaintiff's motion to proceed under a payment plan for filing fees and granted him until January 27, 2014, to pay the filing fee or face dismissal of his appeal. Plaintiff did not pay the filing fee. On February 7, 2014, his appeal was dismissed, and the mandate was issued.

¶ 10 B. Plaintiff's State Court Civil Rights Complaint

¶ 11 On February 21, 2014, plaintiff filed a *pro se* civil rights complaint in state court (case No. 14-L-3) against six defendants, all of whom had been named defendants in his federal court lawsuit, including Godinez, Williams-Schaffer, and Tweedy. The complaint stated on the cover page it was being brought pursuant to "740 ILCS 23/5." Plaintiff made numerous allegations of "deliberate indifference" and alleged violations of the eighth and fourteenth amendments, implying his complaint may have actually been brought pursuant to section 1983 (28 U.S.C. § 1983 (2012)).

¶ 12 Plaintiff once again alleged defendants were deliberately indifferent to his serious mental-health needs while he was an inmate between November 2005 and June 2012. Noting he had been seen on numerous occasions by mental-health-care providers at DOC, plaintiff alleged they failed to diagnose and treat his paraphilia because of the cost. Plaintiff argued defendants' actions, or lack thereof, caused him mental and physical injuries and prohibited him from being

transferred to the Department of Human Services for mental-health treatment pursuant to sections 3-8-5(a), (c), (d) of the Unified Code of Corrections (730 ILCS 5/3-8-5(a), (c), (d) (West 2014)).

¶ 13 Plaintiff's specific allegations against defendants were nearly identical to those in his federal court complaint. Plaintiff alleged Godinez was deliberately indifferent when he failed to establish rules and implement policies for the provision of mental-health services because of the expense, which "facilitated" the failure to diagnose and treat his paraphilia. Plaintiff alleged Williams-Schaffer was responsible for sex-offender services, including "evaluations to determine mental disorders," and was "duty bound to treat the [p]laintiff's mental health afflictions." He alleged she was deliberately indifferent when she failed to provide treatment to him. Plaintiff alleged Tweedy treated him on numerous occasions between May 2011 and June 2012.

Although Tweedy made certain diagnoses, plaintiff alleged she never diagnosed or treated him for paraphilia, and therefore, she was deliberately indifferent to his medical needs. Also like his federal court complaint, plaintiff alleged all defendants conspired to be deliberately indifferent to his serious mental-health needs by failing to diagnose and treat his paraphilia.

¶ 14 In May 2014, Godinez and Williams-Schaffer moved to dismiss the complaint pursuant to section 2-615 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-615 (West 2014)), alleging plaintiff failed to state a claim for (1) discrimination pursuant to the Illinois Civil Rights Act of 2003 (Civil Rights Act) (740 ILCS 23/5 (West 2014)), (2) deliberate indifference pursuant to section 1983 (28 U.S.C. § 1983 (2012)), (3) mental-health malpractice, or (4) conspiracy.

¶ 15 In August 2014, Tweedy moved to dismiss the complaint pursuant to sections 2-619(a)(4) and (a)(9) of the Procedure Code (735 ILCS 5/2-619(a)(4), (9) (West 2014)),

alleging plaintiff's claims were barred by *res judicata* because of the adjudication of the exact same claims in his federal court case (735 ILCSW 5/2-619(a)(4) (West 2014)). Tweedy also moved for sanctions, arguing plaintiff knew his state court complaint was not well grounded in fact or in existing law because his federal court case was found to be without merit. She maintained plaintiff's state court complaint was filed only to harass defendants. Tweedy noted plaintiff had an extensive history of harassing litigation, having filed at least 20 federal court cases and an undetermined number of state court cases.

¶ 16 Plaintiff filed responses to the motions to dismiss, arguing he had stated a valid claim and *res judicata* did not apply.

¶ 17 In January 2015, the trial court heard arguments on the motions to dismiss. During the hearing, plaintiff clarified his allegations. He argued certain agents of DOC had a duty to diagnose him with paraphilia, and but for their failure to do so, he would have been allowed to "get into treatment and then possibly be released." He argued his damages were his loss of freedom and liberty. However, plaintiff maintained he did not in fact suffer from paraphilia. He stated, "I tell you before this [c]ourt that I don't have a mental disorder and it's made up, and there have been numerous ways to say that it's been made up." Plaintiff stated he had numerous doctors he would bring to court "to tell you that it doesn't exist." Thereafter, the court dismissed all claims against all defendants, reasoning plaintiff's claims were speculative. The court stated, "I don't believe there is any set of facts that you can prove that would show you're entitled to damages under the particular theory you're arguing today." The court also took notice of the federal court pleadings, which it noted were "remarkably similar" to the pleadings in the instant case. Accordingly, the court found *res judicata* applied to all the claims and all the defendants.

¶ 18 In February 2015, the trial court entered a written order allowing the motions to dismiss, finding as follows:

"[P]laintiff's prior litigation in the United States District Court in *Powers v. Godinez*[,] 12-3304[,] was between the same parties and for a virtually identical cause of action. The claims are therefore barred by *res judicata*. In addition, the [c]ourt finds that [p]laintiff's argument that he has suffered injury in the form of loss of liberty from [d]efendants' purported failure to provide sex[-]offender[-]specific treatment is too speculative to state a claim upon which relief can be granted. The case is likewise dismissed for this reason."

The court denied Tweedy's motion for sanctions. The court further dismissed all unserved defendants as being barred by *res judicata*, striking the case in its entirety as to all claims and all parties.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 Plaintiff argues the trial court erred by (1) denying his civil rights complaint based on *res judicata*, and (2) "bringing in the Sexually Violent Persons Act (725 ILCS 207/1 [to 99 (West 2014)]) where his case is whether the plaintiff under the care [and] custody of the [d]efendants, the [d]efendants delayed, failed to treat[,] or even diagnose the [p]laintiff's mental disorder of [p]araphilia not otherwise specified, nonconsent[,] denying the [p]laintiff's constitutional right to adequate medical/mental[-]health care." We affirm.

¶ 22 We review dismissals pursuant to section 2-619 of the Procedure Code *de novo*,

interpreting the pleadings and supporting documents in the light most favorable to the nonmoving party. *Cooney v. Rossiter*, 2012 IL 113227, ¶ 17, 986 N.E.2d 618.

¶ 23 Section 2-619(a)(4) of the Procedure Code provides a party may seek an involuntary dismissal if the cause of action is barred by a prior judgment. 735 ILCS 5/2-619(a)(4) (West 2014). Section 2-619(a)(4) incorporates the doctrine of *res judicata*. *Illinois Non-Profit Risk Management Ass'n v. Human Service Center of Southern Metro-East*, 378 Ill. App. 3d 713, 719, 884 N.E.2d 700, 707 (2008).

"Under the doctrine of *res judicata*, a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent cause of action between the parties or their privies on the same cause of action. [Citation.] The doctrine of *res judicata* applies to all matters that were actually decided in the original action, as well as to matters that could have been decided. [Citation.]

Accordingly, three requirements must be met for application of the doctrine of *res judicata*: '(1) there was a final judgment on the merits rendered by a court of competent jurisdiction; (2) there was an identity of cause of action; and (3) there was an identity of parties or their privies.' [Citation.]" *Cooney*, 2012 IL 113227, ¶ 18, 986 N.E.2d 618.

See also *U.S. ex rel. Lusby v. Rolls-Royce Corp.*, 570 F.3d 849, 851 (7th Cir. 2009) ("Claim preclusion under federal law has three ingredients: a final decision in the first suit; a dispute arising from the same transaction (identified by its 'operative facts,' [citation]); and the same litigants (directly or through privity of interest).").

¶ 24

A. Final Judgment on the Merits in the
Previous Federal Court Lawsuit

¶ 25 Under federal law, "[a] dismissal for failure to state a claim is a dismissal on the merits, Fed. R. Civ. P. 41(b), unless the dismissal order states otherwise; and a dismissal on the merits is normally with prejudice and thus a bar to relitigation." *Kamelgard v. Macura*, 585 F.3d 334, 339 (7th Cir. 2009). The same holds true under Illinois law. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 303, 703 N.E.2d 883, 889 (1998) ("Under Illinois law, therefore, it is clear that the dismissal of a complaint for failure to state a claim is an adjudication on the merits.").

¶ 26 Here, the federal district court issued a final judgment on the merits of plaintiff's section 1983 lawsuit, finding plaintiff failed to state a claim because "the facts he allege[d] do not plausibly suggest that any of the [d]efendants were deliberately indifferent to [p]laintiff's serious mental illness." The court then denied plaintiff's postjudgment motions. Plaintiff appealed to the Seventh Circuit Court of Appeals. However, he failed to pay the appellate filing fees after he was denied leave to proceed *in forma pauperis* by both the district court and the appellate court, and the appeal was dismissed. Therefore, the first requirement for *res judicata* has been met.

¶ 27

B. Identity of Cause of Action With the
Previous Federal Court Lawsuit

¶ 28 A determination of "identity of cause" requires application of the "transactional test" adopted by Illinois, meaning "separate claims will be considered the same cause of action for purposes of *res judicata* if they arise from a single group of operative facts, regardless of whether they assert different theories of relief." *River Park*, 184 Ill. 2d at 311, 703 N.E.2d at 893; see also *Huon v. Johnson & Bell, Ltd.*, 757 F.3d 556, 558-59 (7th Cir. 2014).

¶ 29 Here, plaintiff first filed his federal civil rights complaint pursuant to section 1983 (42 U.S.C. § 1983 (2012)). In his subsequent state court lawsuit, plaintiff referenced section 5 of the Civil Rights Act (740 ILCS 23/5 (West 2014)) as the statute under which he was bringing his "civil rights complaint." This statute specifically prohibits various forms of discrimination. In his state court complaint, plaintiff made no mention whatsoever of discrimination. Rather, plaintiff's core argument was that defendants were indifferent to his mental disorder and failed to treat it because of "expense." Moreover, even if plaintiff had successfully argued discrimination, assertion of a different theory of relief will not supersede *res judicata* when the claims arise out of the same operative facts. *River Park*, 184 Ill. 2d at 311, 703 N.E.2d at 893. Plaintiff's attempt to cite new legal authority to work around the doctrine of *res judicata* was futile.

¶ 30 As recited above, plaintiff's state court complaint realleged, almost verbatim, the claims he made against the same defendants in federal court. Moreover, plaintiff draws no factual distinction between the state court and federal court claims. In fact, he makes no argument disputing the two cases are based on the exact same operative facts. Since both lawsuits arose from the same set of operative facts, there is an identity of cause of action. Therefore, the second requirement for *res judicata* has been met.

¶ 31 C. Identity of Parties With the Previous
Federal Court Lawsuit

¶ 32 The final requirement of the *res judicata* analysis is an identity of parties or their privies. *River Park*, 184 Ill. 2d at 302, 703 N.E.2d at 889; *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 315 (7th Cir. 1985).

¶ 33 Here, the parties in the state court case before us are identical to those in the federal court lawsuit. Thomas Powers was the sole plaintiff in both cases. Godinez, Williams-Schaffer, and Tweedy were named defendants in both cases. Therefore, the third requirement for

res judicata has been met.

¶ 34 All three elements of *res judicata* are present here. The trial court did not err in dismissing plaintiff's state court lawsuit as barred by *res judicata*. We decline to address the remainder of plaintiff's arguments.

¶ 35 III. CONCLUSION

¶ 36 For the foregoing reasons, we affirm the trial court's judgment.

¶ 37 Affirmed.