2017 IL App (1st) 161449-U

THIRD DIVISION
December 13, 2017

No. 1-16-1449

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

VICTORIA BRIDGEFORTH,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	No. 14M112049
	)	
YOLANDA WINDMON,	)	The Honorable
	)	Dennis M. McGuire,
Defendant-Appellee.	)	Judge Presiding.
	)	
	)	

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 Held: Summary judgment appropriate where federal court case stemming from same operative facts precludes state court case on principles of *res judicata*. *Affirmed.*

¶ 2 Plaintiff-appellant Victoria Bridgeforth (Officer Bridgeforth) appeals from the circuit court's grant of summary judgment against her and in favor of defendant-appellee Yolanda Windmon (Sergeant Windmon) in her lawsuit claiming intentional battery and intentional

infliction of emotional distress against Sergeant Windmon, her former job supervisor. Officer Bridgeforth contends the court erred in granting summary judgment and asks this court to reverse the circuit court's ruling and remand the cause for further proceedings. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 Officer Bridgeforth is employed by the Cook County Sheriff's Department (Sheriff's Department) as a corrections officer at the Cook County Jail. Sergeant Windmon, who also works for the Sheriff's Department, was a superior ranking deputy Sheriff to Officer Bridgeforth, and was sometimes her supervisor at the time of the incidents described herein.

¶ 5 In March 2014, Officer Bridgeforth filed a lawsuit against Sergeant Windmon as her former job supervisor, as well as their employer, Cook County Sheriff Thomas Dart, and Cook County, Illinois as indemnor of Sheriff Dart. By that lawsuit, Officer Bridgeforth alleged that Sergeant Windmon committed the torts of intentional battery and intentional infliction of emotional distress against her on three specific occasions. The first incident, as alleged by Officer Bridgeforth, consisted of the following actions:

> "1. Beginning in September, 2012, [Sergeant Windmon] began harassing and abusing [Officer Bridgeforth] while [Officer Bridgeforth] was working. Specifically, [Sergeant Windmon] would refuse to permit [Officer Bridgeforth] to subject her to checkpoint surveillance personal inspection at the Cook County Jail, even though [Sergeant Windmon] knew that [Officer Bridgeforth] was required to conduct such personal inspections as a part of her job duties, and in particular when a person entering the Cook County Jail compound, such as [Sergeant Windmon] triggered the signal on the metal detector indicating transportation of prohibited objects.

2. [Sergeant Windmon] knew that in those circumstances, [Officer Bridgeforth] did not have discretion to permit [Sergeant Windmon's] entry into the compound without being subjected to electronic 'wand' search. Nevertheless, in September, 2012 and on multiple occasions thereafter, [Sergeant Windmon] resisted [Officer Bridgeforth's] efforts to 'wand' her, knowing that [Officer Bridgeforth] was required to do so as part of her duties as officer at that particular checkpoint."

¶ 6 The next incident occurred on March 5, 2013, and Officer Bridgeforth describes it in the following manner:

"6. A similar event transpired on March 5, 2013, in the Jail compound at Division 4, wherein [Sergeant Windmon] refused inappropriately to permit [Officer Bridgeforth] to wand-search her."

¶ 7 The third and final alleged incident occurred on March 20, 2013. Officer Bridgeforth describes this incident as follows:

"7. On March 20, 2013, [Sergeant Windmon] observed [Officer Bridgeforth] reviewing a calendar. At that time and place, [Sergeant Windmon] stuck [*sic*] and pushed [Officer Bridgeforth] in the back, without justification and without any provocation from [Officer Bridgeforth]. When [Officer Bridgeforth] turned around and saw [Sergeant Windmon], [Sergeant Windmon] stuck her tongue out at [Officer Bridgeforth], apparently to mock or taunt [Officer Bridgeforth]."

¶ 8 In her lawsuit, Officer Bridgeforth alleged that these three incidents "directly and proximately caused damage" to her in "emotional suffering, mental anguish, humiliation, degradation of [Officer Bridgeforth's] reputation and emotional distress.[1]

¶ 9 Officer Bridgeforth also filed a complaint in federal court against Sheriff Dart and Cook County, Illinois, based on the identical facts of this case, alleging sex discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII) (42 U.S.C. § 2000 *et seq.* (West 2014)). *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545 (United States District Court, N.D. Illinois) (October 13, 2015) (slip opinion).

¶ 10 In October 2014, the district court issued a memorandum opinion granting summary judgment to Sheriff Dart and Cook County. *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545. In that, the court discussed the identical three alleged incidents that occurred on September 14, 2012, in which Sergeant Windmon allegedly gave Officer Bridgeforth a hard time at the security check in the jail lobby; the March 5, 2013, incident, again in the jail lobby, when Sergeant Windmon gave Officer Bridgeforth a hard time at the security check; and the March 20, 2013, incident in which Sergeant Windmon allegedly bumped Officer Bridgeforth, then apologized "but had a smile on her face," then stuck out her tongue at Officer Bridgeforth. *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

¶ 11 The court specifically described the March 20 incident as follows:

> "The third incident—and yes, the description of the second incident is finished—occurred on March 20, 2013. While Bridgeforth was inspecting the wall calendar in Commander Hall's office, Windmon hit her in the back. Bridgeforth does not know which

[1] Officer Bridgeforth also alleged that defendant Sheriff Thomas Dart was "liable for damages caused by actions and omissions of Sergeant Windmon" under the theory of *respondeat superior*." She also alleged that defendant Cook County was "liable as indemnor for any liability adjudicated against Defendant Dart." Defendant Dart and defendant Cook County were dismissed from this cause in December 2014.

> part of Windmon's body touched her. Bridgeforth says she was pushed; Defendants say that Windmon was unaware Bridgeforth was even in the office and accidentally bumped into her. Bridgeforth's version is credited on summary judgment. Windmon said, 'I'm sorry,' but had a smile on her face. Windmon added, 'I apologized for my actions. You don't have to look at me like that,' and then yelled repeatedly, 'Are you threatening me?' Bridgeforth complained to Commander Hall about the incident before returning to her assignment. Windmon stuck out her tongue at Bridgeforth several times after the push." *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

Sergeant Windmon no longer supervises Officer Bridgeforth. *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

¶ 12 In granting summary judgment in favor of Sheriff Dart and Cook County, the district court stated, in part:

> "Even construing the record in the light most favorable to Bridgeforth, the acts of which she complains lack the severity or pervasiveness needed to establish a hostile work environment. There is no evidence that Windmon and Bridgeforth's interactions occurred with such regularity that they altered the terms and conditions of Bridgeforth's employment. Nor does the record indicate that they unreasonably interfered with Bridgeforth's work performance." *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

The court acknowledged that the March 20 push or bump differs from the other two alleged incidents, but found that, "because the acts of which Bridgeforth complains are not objectively severe or pervasive, they cannot support a hostile work environment claim." *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

¶ 13 Finally, in granting summary judgment, the court concluded:

> "Defendants' summary judgment motion is granted. In so holding, the court makes no judgment as to whether Windmon was a good boss or colleague. But unpleasantness and immaturity in the workplace, while regrettable, does not by itself violate Title VII's prohibition against sex discrimination." *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545.

Officer Bridgeforth did not appeal the federal district court's October 13, 2015 order granting summary judgment.

¶ 14 Meanwhile, in November 2015, back in the circuit court, Sergeant Windmon filed a motion for summary judgment based first on principles of *res judicata* and, second, on the theory that the contact at issue was *de minimis* and there was no evidence of intent to harm. Specifically, she argued that the federal case and the circuit court case are based on the same set of facts, and alternatively, that the undisputed facts do not support any evidence of intentional battery or infliction of emotional distress. In support of her motion, Sergeant Windmon attached three depositions—all of which were taken in the related federal case: that of Sergeant Windmon, Officer Bridgeforth, and Superintendent Hall,[2] who did not witness the pushing incident but was near enough to hear the interaction—to her motion for summary judgment in the circuit court case. In pertinent part, the motion established that the federal district court had granted summary judgment as to *Bridgeforth v. Cook County, et al.*, 2015 WL 5951545, and argued:

> "The Defendant in this municipal case, Yolanda Windmon, was not a named party in the federal case. However the exact same allegations against the Sheriff in the federal case were based solely on the identical allegations against Defendant Windmon alleged in

[2] At the time of these alleged incidents, Superintendent Hall was Commander Hall.

> this municipal case. Plaintiff Bridgeforth could have brought her state tort claim against Windmon in the federal case under pendent jurisdiction but failed to do so. Defendant Windmon now moves for summary judgment on the basis of *res judicata* based on the federal judgment[.]"

¶ 15 After hearing arguments by the parties, the court granted summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (Code) (735 ILCS 5/2-1005) (West 2014)), stating:

> "THE COURT: I had a chance to consider the arguments, read the briefs, everything that was submitted. Even if I was to disregard the *res judicata* aspect, I mean, these contacts are so small that the motion will be granted."

¶ 16 Officer Bridgeforth filed a motion to reconsider, and the circuit court denied the motion to reconsider without hearing arguments.

¶ 17 Officer Bridgeforth appeals.

¶ 18 II. ANALYSIS

¶ 19 i. The Grant of Summary Judgment

¶ 20 On appeal, Officer Bridgeforth contends the court erred in granting the motion for summary judgment in favor of Sergeant Windmon. Specifically, she first argues the court erred when it "set aside the *res judicata* issue and tersely declared " 'these contacts are so small that the motion will be granted,' " because even small contacts can legally be the basis of an intentional battery. Officer Bridgeforth contends that summary judgment on this issue was improper where there remains a question of fact as to whether the shove was intentional based on Sergeant Windmon's subsequent action of sticking her tongue out at Officer Bridgeforth, and whether Sergeant Windmon's apology was genuine in light of the fact that her commanding officer was

within hearing distance. Second, Officer Bridgeforth contends dismissal pursuant to *res judicata* was inappropriate because Sergeant Windmon lacked privity with Sheriff Dart and Cook County because there "is no vicarious liability of the employer parties" for the intentional torts alleged in this lawsuit. Third, Officer Bridgeforth contends the denial of her motion to reconsider the grant of summary judgment was error for the above reasons. Finally, Officer Bridgeforth contends the court erred in granting summary judgment because it failed to reach the claim for intentional infliction of emotional distress. For the following reasons, we affirm.

¶ 21 Initially, in our opinion, Officer Bridgeforth misstates on appeal what the court stated in granting summary judgment. She contends on appeal that "the circuit court correctly disregarded the *res judicata* aspect in ruling on the Motion for Summary Judgment, stating: "In entering summary judgment in favor of Defendant, the Circuit Court set aside the *res judicata* issue and tersely declared 'these contacts are so small that the motion will be granted.' " However, our review of the record reveals that, after the court heard arguments by the parties regarding the motion for summary judgment, the court granted the motion, stating:

> "THE COURT: I had a chance to consider the arguments, read the briefs, everything that was submitted. Even if I was to disregard the *res judicata* aspect, I mean, these contacts are so small that the motion will be granted."

¶ 22 We disagree with Officer Bridgeforth's interpretation that the court granted summary judgment based only on the issue of *de minimis* contacts and that the principle of *res judicata* did not factor into its decision. Instead, the court never said it was disregarding the *res judicata* effect of the federal court order, and we do not know whether it relied on the principles of *res judicata* in granting summary judgment, or even a combination of the arguments and theories presented. In any event, this court can affirm the court below on any basis in the record. See

Illinois State Bar Ass'n Mutual Insurance Co. v. Coregis Insurance Co., 355 Ill. App. 3d 156, 163 (2004); see also *Pepper Construction Co. v. Transcontinental Insurance Co.*, 285 Ill. App. 3d 573, 576 (1996) ("In our review, we may affirm on any basis found in the record regardless of whether the trial court relied on those grounds or whether its reasoning was correct.").

¶ 23 Summary judgment is proper when the pleadings, affidavits, depositions and admissions of record, construed strictly against the moving party, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Morris v. Margulis*, 197 Ill. 2d 28, 35 (2001); 735 ILCS 5/2-1005 (West 2014). This relief is an appropriate tool to employ in the expeditious disposition of a lawsuit in which " 'the right of the moving party is clear and free from doubt.' " *Morris*, 197 Ill. 2d at 35 (quoting *Purtill v. Hess*, 111 Ill. 2d 229, 240 (1986)). In ruling on a motion for summary judgment, the circuit court is to determine whether a genuine issue of material fact exists, not try a question of fact. *Williams v. Manchester*, 228 Ill. 2d 404, 417 (2008).

¶ 24 When determining whether a genuine issue of material fact exists, courts construe the pleadings liberally in favor of the nonmoving party. *Williams*, 228 Ill. 2d at 417. We review summary judgment rulings *de novo (Espinoza v. Elgin, Joliet & Eastern Ry. Co.*, 165 Ill. 2d 107, 113 (1995)) and we will only disturb the decision of the trial court where we find that a genuine issue of material fact exists. *Addison v. Whittenberg*, 124 Ill. 2d 287, 294 (1988). A genuine issue of material fact exists where the facts are in dispute or where reasonable minds could draw different inferences from the undisputed facts. *Morrissey v. Arlington Park Racecourse, LLC*, 404 Ill. App. 3d 711, 724 (2010); see also *In re Estate of Ciesiolkiewicz*, 243 Ill. App. 3d 506, 510 (1993).

¶ 25 *Res judicata* is an equitable doctrine designed to encourage judicial economy by preventing a multiplicity of lawsuits between the same parties where the facts and issues are the same. *Arvia v. Madigan*, 209 Ill. 2d 520, 533 (2004). The doctrine also "protects the parties from being forced to bear the unjust burden of relitigating essentially the same case." *Arvia*, 209 Ill. 2d at 533.

¶ 26 "The doctrine of *res judicata* provides that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand, or cause of action." *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). The essential elements of *res judicata* are: (1) a final judgment on the merits; (2) an identity of parties or their privies; and (3) an identity of causes of action. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 467 (2008); *Northeast Illinois Regional Commuter R.R. Corp. v. Chicago Union Station Co.*, 358 Ill. App. 3d 985, 1000 (2005). "Moreover, the doctrine of *res judicata* applies not only to claims that have been fully litigated in an earlier proceeding, but also those that could have been raised or decided, but were not, thus barring such claims from relitigation at a later date." *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000; *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334-35 (1996) (*Res judicata* "extends not only to what was actually decided in the original action, but also to matters which could have been decided in that suit."). In addition, the issue of whether a claim is barred by *res judicata* is an issue of law which mandates *de novo* review by this court. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 43; *Northeast Illinois Regional Commuter R.R. Corp.*, 358 Ill. App. 3d at 1000.

¶ 27 Under the "transactional analysis" adopted by our supreme court in *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290 (1998), separate claims are considered the same cause of

action and are barred by the doctrine of *res judicata* where 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. Claims may be considered part of the same cause of action "even if there is not a substantial overlap of evidence, so long as they arise from the same transaction." *River Park*, 184 Ill. 2d at 311. The *River Park* court explained that, in the transactional analysis, the claim is viewed in "factual terms" and considered " 'coterminous with the transaction, regardless of the number of substantive theories, or variant forms of relief flowing from those theories, that may be available to the plaintiff; * * * and regardless of the variations in the evidence needed to support the theories or rights.' " *River Park*, 184 Ill. 2d at 309, quoting Restatement (Second) of Judgments § 24, *Comment a*, at 197 (1982). Additionally, a "final judgment bars a plaintiff's claim to all or any part of a transaction or series of connected transactions from which the action arose." *Doe v. Gleicher*, 393 Ill. App. 3d 31, 37-8 (2009) (relying on *River Park*, 184 Ill. 2d at 309).

¶ 28 First, we find that the federal district court case and the State court case involved the same parties for purposes of our analysis under the principle of *res judicata*. Officer Bridgeforth argues that, where the district court defendants were Sheriff Dart and Cook County and the claim was as to Sergeant Windmon's actions as their employee, the case at bar differs because Sheriff Dart and Cook County were initially named as defendants but subsequently dismissed on the ground that they could not be held vicariously liable for Sergeant Windmon's intentional torts they did not direct or authorize.[3] Officer Bridgeforth argues then, that without vicarious liability

[3] We note here that, in support of her argument that Sheriff Dart and Cook County were dismissed "because they could not be held vicariously liable for Sergeant Windmon's intentional torts they did not direct or authorize," Officer Bridgeforth cites to a 39-page section of the record on appeal. This large section of the record does not support her assertion that Sheriff Dart and Cook County were dismissed because of vicarious liability. Rather, the section begins with a motion to dismiss pursuant to section 2-619 of the Code of Civil Procedure, filed by Sergeant Windmon and Sheriff Dart, in which they argue that the cause should be dismissed because, as to Sheriff Dart and

of the employer parties, Sergeant Windmon is not in privity with the employer parties and is therefore "disqualifie[d]" from claiming that the district court case acts as a bar to this cause based on the principle of *res judicata*.

¶ 29 Parties do not have to be identical for purposes of *res judicata*, but, instead, the "requirement [of identity of parties for purposes of *res judicata*] is met where the litigants' interests are sufficiently similar, even though the litigants differ in name." *Schnitzer v. O'Connor*, 274 Ill. App. 3d 314, 318 (1995). Employees have privity with their employers. " 'When a prior judgment is a bar to a claim against an employer, a claim against an employee predicated upon the same acts, is also barred.' " *Ross Advertising, Inc. v. Heartland Bank and Trust Co.*, 2012 IL App (3d) 110200, ¶ 35 (quoting *Bonanno v. La Salle & Bureau County R.R. Co.*, 87 Ill. App. 3d 988, 995 (1980) (citing *Towns v. Yellow Cab Co.*, 53 Ill. App. 3d 47 (1977)).

¶ 30 In this case, the parties do not dispute that, at all times relative to this cause, Sergeant Windmon was an employee of the Cook County Sheriff's Office, and acting within the scope of her employment. An employer and its employees are " 'one and the same' " defendant for purposes of *res judicata*. *Downing v. Chicago Transit Authority*, 162 Ill. 2d 70, 74 (1994) (quoting *Towns*, 73 Ill. 2d at 125). We find a sufficient identity of the parties for purposes of the doctrine of *res judicata*.

¶ 31 Officer Bridgeforth's argument that the doctrine of *res judicata* should not bar the instant cause because the complaint she filed in the circuit court and the complaint she filed in the district court were based on different theories of relief, that is, intentional tort versus employment harassment and discrimination, is not persuasive. In *Lutkauskas*, our supreme court explained:

Sergeant Windmon, it is barred by the Illinois Workers Compensation Act. The rest of the cited pages are: the original complaint and two printed cases. Officer Bridgeforth then cites to the December 2014 order dismissing Sheriff Dart and Cook County with prejudice, but noting that the case remained pending as to defendant Windmon. On this record, this court is unable to verify the reasons defendants Sheriff Dart and Cook County were dismissed.

> "In *River Park*, this court adopted the transactional test to determine identity of causes of action. *River Park, Inc.*, 184 Ill. 2d at 310-11 []. There, we held that '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.' *Id*. at 311[.] Under this principle, the dismissal of a single theory of recovery against a particular defendant operates as a final adjudication of all claims based on other theories of recovery that could have been brought as part of the initial action, as long as they arise from the same core of operative facts. Therefore, simply alleging a new theory of recovery is insufficient to assert a different cause of action, where multiple theories of recovery are predicated on the same core of operative facts." *Lutkauskas*, 2015 IL 117090, ¶ 47.

As noted above, when a prior judgment is a bar to a claim against an employer, a claim against an employee based on the same facts is also barred. Officer Bridgeforth's argument in this regard fails.

¶ 32 Additionally, in our opinion, the two actions at issue here involved the same cause, where both the district court and the circuit court cases arose out of the same group of operative facts. Sergeant Windmon and Officer Bridgeforth are both correctional officers at the Cook County Jail. At the time of the alleged incidents, Sergeant Windmon was Officer Bridgeforth's supervisor. The incidents that form the core of both the district court case and the circuit court case are the same. Claims may be considered part of the same cause of action "even if there is not a substantial overlap of evidence, so long as they arise from the same transaction." *River Park*, 184 Ill. 2d at 311.

¶ 33 Officer Bridgeforth could have brought her state law claims against Sergeant Windmon—both intentional battery and intentional infliction of emotional distress stemming from the same set of facts—in the federal district court case, but failed to do so. Both cases arose out of the same group of operative facts and are considered here, for the doctrine of *res judicata*, to involve the same cause. See *River Park*, 184 Ill. 2d at 311.

¶ 34 We find no error in the circuit court's grant of summary judgment in favor of Sergeant Windmon.

¶ 35 ii. Denial of the Motion to Reconsider

¶ 36 Insomuch as Officer Bridgeforth also appeals the denial of her motion to reconsider the grant of summary judgment, for all of the foregoing reasons, we also affirm the denial of the motion to reconsider. On appeal, Officer Bridgeforth contends the circuit court erred in denying her motion to reconsider the grant of summary judgment. By her motion to reconsider, Officer Bridgeforth argued only that the circuit court erred when it entered summary judgment because the contacts were *de minimis*. The motion did not set forth new facts. On appeal, Officer Bridgeforth again argues that the motion to reconsider should have been granted because whether the contacts at issue were *de minimis* is a question of fact and, as such, summary judgment should not have been granted.

¶ 37 The "purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, changes in the law or errors in the court's previous application of existing law." *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010). "A ruling on a motion to reconsider is typically reviewed for an abuse of discretion, but a motion to reconsider a grant of summary judgment typically questions the trial court's application of exiting law, and the denial of such

motion is reviewed *de novo*." *Wilfong v. L.J. Dodd Const.*, 401 Ill. App. 3d 1044, 1063 (2010); *Duresa v. Commonwealth Edison Co.*, 348 Ill. App. 3d 90, 97 (2004); *Sacramento Crushing Corp. v. Correct/All Sewer, Inc.*, 318 Ill. App. 3d 571, 577 (2000). Our review of this matter, therefore, is *de novo*.

¶ 38 Based on our discussion above, in which we affirmed the grant of summary judgment pursuant to the doctrine of *res judicata*, we find no error in the circuit court's denial of the motion to reconsider the grant of summary judgment.

¶ 39 Due to our determination herein that summary judgment is appropriate pursuant to the doctrine of *res judicata*, we need not address Officer Bridgeforth's remaining claims.

¶ 40 III. CONCLUSION

¶ 41 We find no error in the circuit court's grant of summary judgment in favor of Sergeant Windmon and against Officer Bridgeforth, nor in its denial of Officer Bridgeforth's motion for reconsideration.

¶ 42 For all of the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 43 Affirmed.