2014 IL App (1st) 133476-U

FIFTH DIVISION
September 30, 2014

No. 1-13-3476

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

EARL S. WORTHINGTON,	)	Appeal from
	)	the Circuit Court
Plaintiff-Appellant,	)	of Cook County
	)	
v.	)	13 L 009741
	)	
CITY OF CHICAGO, an Illinois Municipal Corporation,	)	Honorable
	)	Kathy M. Flanagan,
Defendant-Appellee.	)	Judge Presiding

JUSTICE McBRIDE delivered the judgment of the court.
Justices Palmer and Reyes concurred in the judgment.

ORDER

¶ 1 *Held*: Suit concerning seizure and destruction of plaintiff's automobile by municipality (1) was barred where plaintiff failed to first pursue and exhaust the administrative hearing process afforded to him and (2) was barred under Illinois doctrine of *res judicata* by virtue of prior federal suit involving same deprivation.

¶ 2 Earl S. Worthington appeals from the dismissal of his lawsuit seeking $1.2 million from the City of Chicago for mental anguish he experienced after the municipality ticketed, impounded, and destroyed his car and the personal property it contained. The Illinois circuit court judge held that the dismissal of a similar complaint from the federal district court triggered the doctrine of *res judicata*.

¶ 3 Worthington owned a 1999 Toyota 4Runner, a passenger vehicle, which the Chicago police found parked on a municipal sidewalk on three different occasions in early 2013.

¶ 4 The first instance was February 13, 2013, when Chicago Police Officer D. Du Fauchard ticketed Worthington's car because it was parked on the city sidewalk at 415 East 106th Street and because its license plate registration had not been renewed since expiring in January 2007. Nine days later, on February 22, 2013, Officer Du Fauchard ticketed the same car at a different location, 516 East 106th Street, for being parked on a city sidewalk and having expired license tags. Each of the four tickets imposed a $60 fine. The Municipal Code of Chicago provides that when a vehicle is parked on a sidewalk, an officer may, but is not required to, have the car "remov[ed] to a city vehicle pound." Chicago Municipal Code, §9-92-030 (amended Dec. 2, 2009) (referring to Chicago Municipal Code §9-64-110 (amended Nov. 15, 2012), which prohibits parking on a sidewalk). Officer Du Fauchard did not impound Worthington's car on either day. On March 12, 2013, Worthington requested an administrative hearing to contest the four tickets. According to Worthington, he was told that within four to six weeks he would receive notice of his hearing date.

¶ 5 The administrative hearing had not yet been held when a different police officer, J. Nesbary, found Worthington's vehicle on April 24, 2013, parked on the sidewalk at 10557 South Eberhart Avenue. Officer Nesbary wrote a report describing Worthington's four-door, green 4Runner as "fully blocking the sidewalk causing a hazard to the community." The officer also noted that the vehicle's annual license tags had not been renewed since expiring in 2007. Officer Nesbary had the vehicle towed to an impound lot that afternoon and a notice was mailed to Worthington. Worthington learned of the vehicle's whereabouts when he called the police to report

it had been stolen.

¶ 6 The Due Process Clause generally requires that notice and opportunity to be heard occur prior to the government's deprivation of life, liberty or property. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950). In some instances, the provision of notice and a hearing may be postponed until after the deprivation has occurred. *Fuentes v. Shevin*, 407 U.S. 67, 80, 90 (1972); *Zinermon v. Burch*, 494 U.S. 113, 127 (1990) (indicating that in some circumstances, a statutory provision for a postdeprivation hearing, or a common-law tort remedy for erroneous deprivation, satisfies due process).

¶ 7 It is well established that is permissible for a municipality to tow any car illegally parked on public property without first giving the owner of the vehicle notice and an opportunity to be heard. *Redwood v. Lierman*, 331 Ill. App. 3d 1073, 772 N.E.2d 803 (2002) (distinguishing between a motor vehicle illegally parked on a public street and a motor vehicle parked on homeowner's private property); *Sutton v. City of Milwaukee*, 672 F.2d 644 (7th Cir. 1982) (rejecting due process and equal protection arguments against Wisconsin and Milwaukee ordinances that provided for towing, storage, and disposal of abandoned and illegally parked cars).

¶ 8 The Chicago Municipal Code sets out the following postdeprivation procedures when a car has been impounded. An impounded vehicle must be released to its owner immediately upon payment of the towing charges, storage charges, and any fines imposed for violations such as parking on the sidewalk. Chicago Municipal Code §9-92-80 (amended Jul. 28, 2011). Even if the fees are paid and the vehicle is released, the owner may challenge its seizure at an administrative hearing before an administrative law judge or ALJ. Chicago Municipal Code §§2-14-135 (added

Nov. 18, 2009), 9-92-080(a) (amended Jul. 28, 2011). The owner need only make the written request for an administrative hearing within 30 days of the impoundment and the hearing will be held within 30 days of the request. Chicago Municipal Code §2-14-135 (added Nov. 18, 2009). If the owner chooses not to pay the fees and obtain the vehicle's immediate release, but requests a hearing, then the hearing must be held within 48 hours of the request. Chicago Municipal Code §2-14-135 (added Nov. 18, 2009). The ALJ's role is to determine whether the seizure complied with the Chicago ordinance. If the ALJ determines that the seizure was erroneous, then the municipality is not entitled to the towing and storage charges and must immediately return the vehicle to the possession of the owner. Chicago Municipal Code §2-14-135 (added Nov. 18, 2009). The ALJ's decision, regardless of which party it favors, is subject to review pursuant to the Administrative Review Law by a judge of the circuit court. See Chicago Municipal Code §2-14-102 (added Apr. 29, 1998). See also 65 ILCS 5/1-2.1-7 (2004); 735 ILCS 5/3-101-5/3-113 (2004). If the owner of an impounded vehicle fails to obtain its release within 15 days after being notified of its seizure, then the municipality may dispose of the vehicle by auction or destruction. Chicago Municipal Code §9-92-100 (amended Dec. 15, 2004). If the owner requests more time, one 15-day extension may be given. Chicago Municipal Code §9-92-100 (amended Dec. 15, 2004).

¶ 9 The written notice of impoundment that was mailed to Worthington specified that the vehicle would be "eligible for crush" 17 days later, on Monday, May 13, 2013. Worthington did not challenge the seizure by requesting an administrative hearing, nor did Worthington obtain the vehicle's release by paying the fees and fines. The municipality disposed of the vehicle on May 15,

2013.

¶ 10 On May 20, 2013, apparently unaware that his vehicle had been crushed, Worthington filed a complaint in Illinois federal court alleging that the City had violated his constitutional right to procedural due process by towing his 4Runner while he was waiting for the administrative hearing on the earlier parking violations.

¶ 11 On July 29, 2013, the City filed a motion and supporting memorandum of law to dismiss Worthington's complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 12(b)(6) (2012) (governing motions to dismiss for failure to plead sufficient facts to state a cognizable cause of action). Worthington filed a response which included two letters he wrote on July 11, 2013. The first letter was addressed to the City's law department and the second letter was addressed to the federal court judge presiding over Worthington's lawsuit. The first letter informed the City's law department of "newly discovered evidence" about Worthington's damage claim, specifically that his vehicle had been crushed and the personal property it contained was irretrievable. He wrote (1) on an unspecified date, an employee of the City's Department of Streets and Sanitation informed him he could put on a "hold" on the destruction of a vehicle by calling "Bruce" at an unspecified telephone number, (2) on an unspecified date, another employee of the City's Department of Streets and Sanitation told Worthington he could delay the car's destruction by completing "towing paperwork," (3) on an unspecified date, Worthington made the call to Bruce, and (4) on June 13, 2013, during a telephone conversation with an employee of the City's Department of Streets and Sanitation, Worthington learned that the vehicle had been crushed on May 20, 2013, which caused Worthington "immense pain and suffering and mental anguish."

Worthington characterized the City's actions as "strictly malicious," "egregious" and indefensible and he suggested that the parties begin negotiating a settlement payment. The letter addressed to the federal court judge was to provide her with a copy of the letter he sent to the City, and he again proposed that the City "immediately go into settlement negotiations" with him.

¶ 12 The federal district court judge considered the parties' arguments and exhibits, including what Worthington had described as "newly discovered evidence," and on August 15, 2013, the judge granted the motion to dismiss Worthington's complaint with prejudice. The judge reasoned as follows:

> "On May 20, 2013, *pro se* Plaintiff Earl S. Worthington filed the present Complaint against Defendant City of Chicago alleging that Defendant violated the Fourteenth Amendment right to procedural due process. ***
>
> * * *
>
> 'Generally, [the entitlement to] due process [is satisfied by] *** some kind of hearing before the State deprives a person of liberty or property,' although, "in some circumstances [] a postdeprivation hearing or a common-law-tort remedy satisfies due process.' [Citation.] Indeed, 'in instances in which a municipality tows an illegally parked car, the Due Process Clause does not demand that the municipality provide a predeprivation hearing to the owners of the illegally-parked cars.' [Citation.] When a predeprivation hearing is not required, due process only requires that the government provide meaningful procedures to remedy erroneous deprivations.' [Citation] ***

> Therefore, under the circumstances, after the City towed Plaintiff's car on April 26, 2013 based on the alleged parking violation, Plaintiff could have sought an administrative hearing like he did for the February 2013 parking and expired registration violations. Also, Illinois law would have provided Plaintiff with an adequate postdeprivation remedy via an action of bailment or replevin. [Citation.] Instead of seeking [one or both of] these [appropriate] remedies, Plaintiff brought the present due process lawsuit in federal court seeking $1.2 million in damages. (R. 18, Resp., at 1.) It is well established, however, that the federal entitlement is to process and not money. [Citation.] Accordingly, viewing Plaintiff's *pro se* allegations in his favor, [this court concludes] he has failed to state a due process violation under the circumstances, and thus the Court grants Defendant's motion to dismiss with prejudice."

¶ 13 Worthington next filed a four page complaint in the circuit court of Cook County, which he entitled "Complaint for Damage of Personal Property Without Cause." Worthington did not attribute the towing of his car on April 14, 2013, to the fact that the police officer reportedly found it that day "fully blocking the sidewalk causing a hazard to the community." Instead, according to Worthington, his car was towed in April "from his private driveway" because (1) it had been ticketed in February, (2) he contested "this ticket," and (3) he was waiting for the administrative hearing on that alleged violation. Worthington then described his unsuccessful federal lawsuit. He concluded, "[i]n light of this, the Plaintiff *** would now like to file a Complaint [in Illinois state court] in compliance with the Illinois Constitution and the 735 ILCS 5/3/101 [(*sic*)] Illinois state

statute which says all appeals and grievances a Plaintiff has with the city of Chicago administrative hearing judge should be filed in [Illinois state court]." Worthington sought a money judgment "in the sum of $1.2 million plus costs and interest for the mental anguish, pain & suffering & other related matters for the destruction of his 1999 Toyota [4Runner] & personal property inside by the Defendant without cause."

¶ 14 The City filed a motion to dismiss the complaint pursuant to section 2-619(a)(4) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (2010)), on grounds that the federal district court had already considered and rejected Worthington's allegations that he should be financially compensated because his car had been improperly seized and destroyed. The City argued that the doctrine of *res judicata* prevented Worthington from filing repetitive lawsuits.

¶ 15 We were unable to find Worthington's response brief in the record compiled for our review, however, the circuit court judge summarized Worthington's argument in her written order dismissing Worthington's complaint with prejudice. Worthington took the position that there could be no *res judicta* effect when his first lawsuit was his way of disputing the tickets and his second lawsuit was so different in that it was his way of obtaining compensation. Furthermore, he contended, the federal case did not progress to the point that the judge considered all the evidence relevant to his compensation claim, specifically the letters Worthington wrote on July 11, 2013.

¶ 16 The circuit court judge was not persuaded by these distinctions. After considering the arguments, the judge ruled that the doctrine of *res judicata* was triggered because Worthington's federal and state claims were based on one set of operative facts–the improper towing and deprivation of his vehicle and personal property.

¶ 17 Worthington now challenges the circuit court's ruling and the City has filed a response brief in support of the ruling. The appellate rules authorized Worthington to file a reply brief as well. However, the due date for the reply brief was September 3, 2014, and he has neither filed the brief nor requested that we grant an extension of time. We have reviewed the two briefs, the record compiled for review, and the relevant legal authority, and now affirm the dismissal of Worthington's suit.

¶ 18 We reach this conclusion because the City correctly argues that Worthington has failed to exhaust his administrative remedies. The City did not make this argument while the parties were in the circuit court and it was not the basis of the trial judge's decision to grant the City's motion to dismiss. Nonetheless, a reviewing court may affirm a judgment on any ground disclosed by the record, without regard to whether the trial court relied on that particular ground. *Messenger v. Edgar*, 157 Ill.2d 162, 177, 623 N.E.2d 310, 317 (1993) ("a judgment may be sustained upon any ground warranted"); *Material Service Corp. v. Department of Revenue*, 98 Ill. 2d 382, 387, 457 N.E.2d 9, 12 (1983). This is because a reviewing court reviews the judgment, not the specific reasoning that led the trial court to that judgment. *Messenger*, 157 Ill. 2d at 177, 623 N.E.2d at 317; *Material Service*, 98 Ill. 2d at 387, 457 N.E.2d at 12.

¶ 19 The exhaustion of remedies doctrine now argued by the City provides that a person ordinarily must use up all the administrative remedies available to him or her before seeking review or compensation in the courts. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308, 547 N.E.2d 437, 439 (1989) (indicating employment discrimination plaintiff must pursue rehearing from an *en banc* panel of the Human Rights Commission in order to exhaust

administrative remedies and obtain final order reviewable in the circuit court); *Dock Club, Inc. v. Illinois Liquor Control Comm'n*, 83 Ill. App. 3d 1034, 1037, 404 N.E.2d 1050, 1053 (1980) (determining Springfield tavern cited for reducing drink prices for certain patrons on "ladies nights" could not maintain action for injunction and declaratory judgment due to "well-settled law in this State that where administrative remedies are available, they must be exhausted before one can seek judicial review"); *Beahringer v. Page*, 204 Ill. 2d 363, 789 N.E.2d 1216 (2003 (holding that Statesville inmate whose paints and other art materials were confiscated was expected to exhaust written grievance process prior to filing complaint for injunctive and declaratory relief); *Illinois Bell Telephone Co. v. Allphin*, 60 Ill.2d 350, 358, 326 N.E.2d 737, 742 (1975) (indicating the exhaustion doctrine is a basic and long-standing principle of administrative law and is a counterpart to the procedural rule that appellate review is generally limited to final judgments of the trial court).

¶ 20 The circuit court's power to resolve factual and legal controversies surrounding an administrative action must be exercised within its review of an administrative agency's decision and not in a separate proceeding. *Dubin v. Personnel Board of Chicago*, 128 Ill.2d 490, 499, 539 N.E.2d 1243 (1989) ("We have previously recognized that where the [Administrative Review Act] is applicable and provides a remedy, the circuit courts may not redress the parties' grievances through other types of actions."); *Christian Action Ministry v. Department of Local Government Affairs*, 74 Ill. 2d 51, 59-60, 383 N.E.2d 958 (1978) (indicating judicial scrutiny by way of an equity action is improper where administrative review is available).

"Exhaustion of administrative remedies serves two main purposes: first, it protects

> administrative agency authority in that it gives an agency an opportunity to correct its own mistakes *** and it discourages disregard of the agency's procedures, and second, it promotes efficiency in that claims generally can be resolved much more quickly and economically in proceedings before an agency than in litigation in court. The doctrine helps protect agency processes from impairment by avoidable interruptions *** and conserves valuable judicial time by avoiding piecemeal appeals. The requirement that a plaintiff exhaust administrative remedies as a prerequisite to filing suit allows the administrative agency the opportunity to consider the facts of the case before it, use its expertise, and allow the aggrieved party to obtain relief without the need for judicial review. [Citation.]" 1 Ill. L. and Prac., Administrative Law and Procedures §16 (2013).

¶ 21 As we outlined above, the Chicago Municipal Code provided an administrative process for Worthington to follow to challenge the impoundment of his 4Runner in April 2013 and its subsequent destruction in May 2013. More specifically, the appropriate route for Worthington to have taken was to request an administrative hearing about the April sidewalk parking violation, just as he did with the February violations. He could have let the February case and the April case then proceed as separate administrative actions or asked that they be consolidated and heard as one so he could better present his theory that the ticketing in February resulted in the impoundment in April. Regardless, the administrative hearing process was available to him. Had he challenged the April impoundment and been disappointed by the outcome of the administrative proceedings, he could have sought review in the circuit court of Cook County. Or, had he prevailed at the

administrative hearing, he could have used the decision as his basis for a compensation claim against the City. He has, however, bypassed the administrative hearing process and brought his arguments directly to the court whose function is to review administrative decisions.

¶ 22 There are five exceptions to the exhaustion requirement, but none of the five applies to the lawsuit before us. See *e.g.*, *Phillips v. Graham*, 86 Ill. 2d 274, 289 (1981) (exception made where plaintiff is challenging constitutionality of a statute on its face); *Kane County v. Carlson*, 116 Ill. 2d 186, 199 (1987) (exception made where administrative agency's subject matter jurisdiction is disputed); *Castaneda*, 132 Ill. 2d at 309 (exception made where there are multiple administrative remedies and at least one has been exhausted, and exception made where irreparable harm will result from pursuing administrative remedies); *Graham v. Illinois Racing Board*, 76 Ill. 2d 566, 573 (1979) (exception made where it would be patently futile to seek relief before the appropriate agency).

¶ 23 Accordingly, we conclude that the exhaustion of remedies doctrine justified the dismissal of Worthington's suit with prejudice from the circuit court of Cook County.

¶ 24 Furthermore, there is an alternative reason for affirming the dismissal of Worthington's suit from the circuit court: Worthington already brought what was essentially the same suit in the federal court system and the doctrine of *res judicata* is a bar to repetitive litigation. *Res judicata*, or claim preclusion, refers to the preclusive effect that a final judgment on the merits has on the parties, in that it absolutely forecloses litigation of any claim that was, or could have been, raised in an earlier suit between the parties or their privies. *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 302, 703 N.E.2d 883, 889 (1998) (affirming dismissal of an action on *res judicata*

grounds where there was prior federal judgment); *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334, 665 N.E.2d 1199, 1204 (1996). Therefore, when the doctrine is applied, a party is prevented from splitting his or her claims into multiple actions. *Rein*, 172 Ill. 2d at 339, 665 N.E.2d at 1206. *Res judicata* promotes judicial economy by barring repetitious suits and it protects opponents from being forced to bear the time and expense of relitigating what is essentially the same case. *Arvia v. Madigan*, 209 Ill. 2d 520, 533, 809 N.E.2d 88, 97 (1994).

¶ 25 *Res judicata* is applied if the following three criteria are met: (1) there was a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity (sameness) of cause of action between the two actions, and (3) there is an identity of the parties or their privies. *River Park*, 184 Ill. 2d at 302, 703 N.E.2d at 889.

¶ 26 The concept is illustrated by *River Park*, in which the plaintiffs filed a complaint in federal court, alleging that an Illinois municipality had deprived them of property without due process in violation of the plaintiffs' rights under the fourteenth amendment to the Constitution. *River Park*, 184 Ill. 2d at 292, 703 N.E.2d at 884. The plaintiffs had an ownership interest in 162 acres of country club property and wanted to develop upscale houses on a portion of the land. *River Park*, 184 Ill. 2d at 293, 703 N.E.2d at 885. The plaintiffs alleged that while the city was considering the plaintiffs' development plans and rezoning requests, the city did not disclose that it was interested in purchasing the property itself. *River Park*, 184 Ill. 2d at 293-96, 703 N.E.2d at 885-86. The plaintiffs alleged the city's inaction forced the plaintiffs' into bankruptcy and foreclosure and enabled the city to subsequently buy the property at far below its market value. *River Park*, 184 Ill. 2d at 295-97, 703 N.E.2d at 885-887.

¶ 27 The federal judge dismissed the *River Park* complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief could be granted (*River Park*, 184 Ill. 2d at 297, 703 N.E.2d at 302-06 (citing Fed. R. Civ. P. 12(b)(6) (1996)) and the Seventh Circuit affirmed the dismissal (*River Park*, 184 Ill. 2d at 297, 703 N.E.2d at 887).The same plaintiffs then sued the municipality in the circuit court of Lake County, Illinois, casting their claims as violations of state law. *River Park*, 184 Ill. 2d at 292, 703 N.E.2d at 884. The Illinois state court judge held that *res judicata* barred the second suit, and the Illinois Supreme Court agreed. *River Park*, 184 Ill. 2d 290, 703 N.E.2d 883. The Supreme Court held that under both Illinois and federal law, "the dismissal of a complaint for failure to state a claim is an adjudication on the merits." *River Park*, 184 Ill. 2d at 303-306, 703 N.E.2d at 889-91 (citing Ill. Sup Ct. R. 272 and Fed. R. Civ. P. 41(b)). Similarly, here, the federal district court dismissed Worthington's claim pursuant to Rule 12(b)(6) for failure to state a claim and according to *River Park*, that ruling was a final judgment on the merits.

¶ 28 Appellant Worthington contends the federal court's ruling regarding his lawsuit was not a final judgment because (1) it addressed only Worthington's original complaint about the impoundment of his vehicle, (2) Worthington had amended the pleading with a personal property damage claim based on the destruction of his vehicle and its contents, and (3) the City had not yet responded to that property claim when the court entered its dismissal order. Worthington's argument, however, is factually incorrect. What he refers to as an amendment to his original complaint are the letters he sent on July 11, 2013, to the City's law department and the federal court judge to inform them of the destruction of his vehicle. As we summarized above, Worthington

attached these letters to his response brief in opposition to the City's motion to dismiss. Worthington did not title these attachments as an amended complaint, it would have been procedurally improper to attempt to amend a complaint through a response brief, and there is no indication that that City or the federal judge construed the attachments as an amended pleading to add a new claim. In any event, Worthington contends that because the City never filed a reply brief in support of its motion to dismiss, the City had not responded to his amended allegations. Worthington, however, does not cite any precedent indicating the City had to file a written reply brief in order for the federal judge's dismissal with prejudice to be construed as final. Thus, we do not find Worthington's distinction persuasive.

¶ 29 Instead, what is crucial is that the federal court judge intended for the ruling to conclude the case instead of leaving the matter open for further action. See *Mostly Memories, Inc. v. For Your Ease Only, Inc.*, 526 F.3d 1093, 1097 (7th Cir. 2008) (indicating a decision is ordinarily considered final and appealable only when it ends the litigation on the merits and leaves nothing further for the court to do but execute the judgment). The record clearly indicates that the judge intended to render a final judgment order. In ruling that Worthington failed to state a due process claim upon which relief could be granted, the court wrote, "The Court grants Defendant's motion to dismiss *with prejudice* [(emphasis added)] and dismisses the lawsuit in its entirety. All pending dates and deadlines are stricken." In addition, the court issued a separate document entitled "Judgment in a Civil Case," in which it reiterated, "IT IS HEREBY ORDERED AND ADJUDGED that defendant's motion to dismiss with prejudice is granted and *this case is hereby dismissed in its entirety*." Either one of these statements would make it abundantly clear that the

federal court was finished with the case. Worthington's contention that ruling is incomplete has no basis in fact.

¶ 30 Worthington also contends that *res judicata* does not apply because "the federal district court is outside of its jurisdiction to rule on this due process complaint." This is another incorrect statement. Federal due process claims are authorized by various statutes, including the one cited in Worthington's federal pleading, Section 1983 of the Civil Rights Act (42 U.S.C. §1983 (2010)), and this federal statute conferred jurisdiction on the federal court to adjudicate the merits of Worthington's due process claim. Worthington is correct that the federal court lacked authority to conduct an administrative hearing concerning the ticketing and impoundment of his vehicle. Nonetheless, the federal court indisputedly had jurisdiction to rule on the due process claim that Worthington's complaint presented. The federal court was within its jurisdiction when it granted the City's motion to dismiss with prejudice, dismissed the case in its entirety, and struck all future dates and deadlines. The order was a final order for all purposes, including for the purposes of *res judicata*.

¶ 31 The second requirement of *res judicata* is an identity of the causes of action. Our Illinois Supreme Court adopted the transactional test to determine whether there is an identity or sameness of the causes of action. *River Park*, 184 Ill. 2d at 309-10, 703 N.E.2d at 892. Under the transactional test, a court examines the facts that give rise to the plaintiff's right to relief, regardless of the theory of relief or variant forms of relief that may be available to the plaintiff and regardless of the variations in the evidence needed to support the claims. *River Park*, 184 Ill. 2d at 309, 703 N.E.2d at 883. If the plaintiff's successive claims for relief arise from a single group of operative

facts, the transactional test is satisfied. *River Park*, 184 Ill. 2d at 307, 703 N.E.2d at 881. The court pragmatically considers all the facts giving rise to the plaintiff's right to relief, not simply the facts which support the judgment entered in the first action. *River Park*, 184 Ill. 2d at 309, 703 N.E.2d at 892. Courts shall find there are identical causes of action even if there is not a substantial overlap of evidence needed to prove the causes of action, so long as the causes of action arise from the same transaction. *River Park*, 184 Ill. 2d at 311, 703 N.E.2d 883 at 893.

¶ 32 The circuit court concluded that Worthington's federal suit and state court suit have an identity of cause of action. Worthington does not disagree with this conclusion. Instead, he focuses his argument entirely on his federal lawsuit and whether his July 11, 2013, letters asserted a different cause of action than the cause of action set out in his actual complaint. His exclusive focus on the federal court proceedings is a failure to address the correct issue. Therefore, we find the issue is waived. See Ill. Sup. Ct. R. 341(h)(7) (2010) (indicating the appellant's opening brief must contain an argument section and "[p]oints not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing); *Liberty Mutual Fire Insurance Co. v. Woodfield Mall, L.L.C.*, 407 Ill. App. 3d 372, 941 N.E.2d 209 (2010). Worthington would have to prevail on all three prongs of *res judicata* in order to prevail in this appeal, and his waiver of this second prong is a capitulation of his appeal.

¶ 33 Waiver aside, Worthington's federal and state suits do have an identity of cause of action. His suits are the same cause of action for purposes of *res judicata* because they arise from the same transaction or group of operative facts. Both suits are based on Worthington having been deprived of his vehicle by the City. In his federal pleading, Worthington contended the City violated his

civil rights when it "seized Plaintiff's Toyota 4Runner vehicle while Plaintiff was waiting for his administrative hearing before a City of Chicago administrative judge." In the current suit, Worthington complained that the City had "towed Plaintiff's Toyota 4Runner from his private driveway" and then "crushed/destroyed [the vehicle] along with the contents inside," that he filed the second suit because "all appeals and grievances a Plaintiff has with city of Chicago administrative hearing judge should be filed in the Illinois Cook County Court system."

¶ 34 Our conclusion that the federal and state law suits arose from the same operative facts for purposes of *res judicata* is also supported by an analogous case cited by the City, *Davis v. City of Chicago*, 53 F.3d 801 (1995). In that dispute, the City suspended and then fired one of its employees, Davis, for purportedly participating in a ghost payroll scheme. *Davis*, 53 F.3d at 802. Davis sought an administrative hearing, and then appealed the decision to the City Personnel Board, which reinstated him, but without back pay. *Davis*, 53 F.3d at 802. Davis then pursued further relief through the circuit court of Cook County, which conducted an administrative review and awarded him the back pay. *Davis*, 53 F.3d at 802.

¶ 35 Davis then filed a section 1983 lawsuit in the federal system, seeking compensation for lost opportunities to work overtime and request promotions during the period he had been suspended and discharged. *Davis*, 53 F.2d at 802. However, the federal district court dismissed the section 1983 suit on *res judicata* grounds (*Davis*, 53 F.3d at 802), and this ruling was affirmed on appeal to the Seventh Circuit.

¶ 36 The Seventh Circuit reasoned that the Illinois court would have permitted Davis to join his complaint for administrative review with his section 1983 claim for additional compensation, and

that the federal court would not allow him to essentially duplicate his Illinois lawsuit. *Davis*, 53 F.3d at 802. The court explained:

> "Discipline of a civil service employee often follows the path Davis trod: an accusation of misconduct, followed by suspension (with or without pay) or some other interim measure, leading to discipline or discharge. It would be silly to break this sequence into little packages, litigating two or three times: once over the accusation, again over the interim measures, and still a third time over the final decision. Although the different phases may present different legal questions and different damages, the overlap of the facts behind the entire sequence calls for common treatment. [Citation.] Illinois does not hinder joining a claim against the City with the request for review of an administrative decision. Genuinely distinct theories need not be joined, even if they arise out of the same contract or employment relation. [Citations.] But different phases of the same basic dispute are not separate claims." *Davis*, 53 F.3d at 803.

¶ 37 Like Davis, Worthington has brought two suits involving "different phases of the same basic dispute"–whether the City acted lawfully when it deprived Worthington of his 4Runner, by seizing it and subsequently by disposing of it. Because the seizure and disposal were two phases of the same basic dispute, the two suits arose from the same set of operative facts. Accordingly, the two suits have an identity of cause of action for purposes of *res judicata*.

¶ 38 The third requirement of *res judicata* is an identity of parties, or their privies. The parties here are the exact same parties as those in the federal lawsuit.

¶ 39 For these reasons, we conclude that the three criterion of *res judicata* are satisfied and that the doctrine warranted the dismissal of Worthington's action from the circuit court.

¶ 40 We find no error in the circuit court's dismissal of Worthington's suit with prejudice. The ruling is affirmed.

¶ 41 Affirmed.