THIRD DIVISION
July 24, 2019

No. 1-18-0477

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

JEROME E. WATSON, Plaintiff-Appellant, v. KWAME RAOUL, in His Official Capacity as Attorney General of the State of Illinois, and the ILLINOIS STATE POLICE, Defendants-Appellees.	)	Appeal from the Circuit Court of Cook County 16 CH 10370 Honorable Sophia H. Hall Judge Presiding

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JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Reversed and remanded. Under unique circumstances, applying *res judicata* would result in fundamental unfairness to plaintiff.

¶ 2 Plaintiff, Jerome Watson, pled guilty to attempted murder in 1999. In 2006, Illinois created the Murder and Violent Offender Against Youth Registration Act, 730 ILCS 154/1, *et seq*. (West 2016) (VOYRA). According to the State, Watson is required to register under VOYRA. Failing to register is a felony offense. See 730 ILCS 154/60 (West 2016).

¶ 3 After being so advised, Watson filed multiple *pro se* lawsuits in federal court, arguing among other things that he was not required to register—the statute did not apply to him. One of

the federal court decisions, conducting a preliminary review of the *pro se* complaint without adversarial presentation, ruled on the merits that the VOYRA did, in fact, require Watson to register. The remaining lawsuits were stricken by the federal court under the federal three-strikes rule governing *pro se* complaints.

¶ 4 The State prosecuted Watson in the circuit court of Cook County for failing to register. Watson was acquitted. The basis for the circuit court's acquittal was its determination that VOYRA did *not* apply to Watson's crime, and thus he was not required to register. The state-court judge, in other words, reached the opposite legal conclusion than that of the federal court.

¶ 5 That didn't stop the State from charging Watson again. He was acquitted again, albeit for a different reason this time, the State's failure to prove that Watson's victim was a minor.

¶ 6 Watson then brought this lawsuit, asking the circuit court to end the suspense, so to speak, and declare once and for all that he was not required to register under VOYRA. The State responded with several arguments, the most preliminary of which was that this action was barred by *res judicata*, given the federal district court's conclusion that Watson was required to register under VOYRA. The circuit court agreed that the prior federal court decision barred this action under *res judicata*.

¶ 7 The circuit court was correct that the elements of *res judicata* apply here. But under the rather extraordinary circumstances present here, including the possibility of yet another prosecution for failing to register looming over Watson, we think it is appropriate to impose an exception to that rule here. We thus reverse the trial court's judgment and remand.

¶ 8 BACKGROUND

¶ 9 In 1999, Watson pled guilty to and was given a 10-year sentence for attempted murder. Prior to 2006, the State asserted that Watson was required to register as a sex offender even

though his crime was not sexual in nature. But in 2006, the Legislature adopted VOYRA, a new statutory scheme which required individuals to register if they had been convicted of certain violent but non-sexual crimes against youth. The VOYRA registration requirement thus succeeded the requirement to register as a sex offender for those crimes which were not sexual in nature. See 730 ILCS 154/11 (West 2016).

¶ 10 In 2009, the State informed Watson that he was required to register under VOYRA. Watson disagreed and filed numerous federal civil rights lawsuits alleging he was being harassed into registering even though he did not believe the law required him to. Each of these lawsuits was filed *pro se* with a request to proceed "*in forma pauperis*." Pursuant to federal law, when a plaintiff such as Watson seeks the right to sue as a pauper, the federal court "shall dismiss the case at any time if the court determines" it is frivolous or fails to state a claim. See 28 U.S.C § 1915(e)(2)(b).

¶ 11 In March 2010, Watson's first federal lawsuit was dismissed pursuant to § 1915. The court found that Watson could not state a claim with regard to the obligation to register. In the dismissal order, the court explained that plaintiff was previously required to register as a sex offender, and thus once VOYRA was created, he was likewise required to register under VOYRA.

¶ 12 Watson did not accept that determination. He again filed a lawsuit claiming he was improperly being required to register. And again, in March 2011, pursuant to its authority under § 1915, the federal district court dismissed the case. This time, the court was much more direct: "it is plain from the statute that the plaintiff's conviction for attempted murder of a child qualifies as a violent offense against youth; any argument to the contrary is frivolous."

¶ 13 Undaunted, Watson filed a third claim that, in June 2011, pursuant to § 1915, was dismissed as barred by claim preclusion (i.e. *res judicata*). Watson then filed three more federal lawsuits which were summarily dismissed pursuant to 28 U.S.C § 1915(g) (barring a plaintiff from filing after three prior cases are dismissed under § 1915).

¶ 14 In 2012, the State charged Watson for failing to register under VOYRA. After the State's case, the court granted Watson's motion for directed finding, reasoning that Watson was *not* required to register under VOYRA, because while a conviction for first-degree murder was a triggering offense under VOYRA, a conviction for *attempt* first-degree murder was not:

> "My review of 730 ILCS 154-5, setting forth the offenses for which the registration for violent offender against a child or against youth * * * in some sections includes offenses and the attempt to commit those offenses. That language is not in the section requiring registration for first degree murder, and even the form improperly entitled 'Illinois Sex Offender's Registration Act' registration form uses a checklist with 'Murder, victim under 18.' "

The circuit court, in other words, reached the opposite conclusion of the federal court on its interpretation of VOYRA.

¶ 15 Watson was again charged with failing to register in 2013. This time, the circuit court—a different judge—found him not guilty because the State failed to prove that the victim was a youth, as required by VOYRA.

¶ 16 Watson filed his present claim seeking declaratory judgment. Specifically, in his amended complaint, he sought "a judgment declaring that plaintiff's conviction in 1999 in case number 98 CR 4525 does not require him to register under [VOYRA]." He alleges, in part, that he is entitled to this declaration for the same reason the circuit court granted his motion for

directed finding the first time he was prosecuted: the text of VOYRA does not require those convicted of *attempt* first-degree murder to register.

¶ 17 Defendants moved to dismiss. They first contended that Watson's claim was precluded by *res judicata* due to the federal cases. In the alternative, they argued that his claim was barred by the general five-year statute of limitations, and that it should be dismissed on the merits, in any event, for failure to state a claim.

¶ 18 After full briefing, the court held that "*res judicata* bars plaintiff from relitigating the same issues in the instant case and warrants dismissal of this cause of action. This Court does not reach the issue of whether the five year statute of limitation applies to this cause of action or whether the Amended Complaint states a cause of action."

¶ 19 The court dismissed the declaratory judgment claim, and Watson timely appealed.

¶ 20 ANALYSIS

¶ 21 On appeal, Watson's primary contention is that the court erred by finding that his declaratory judgment claim was barred by *res judicata*. Our review is *de novo*. *Khan v. Deutsche Bank AG*, 2012 IL 112219, ¶ 18. Likewise, whether *res judicata* (or collateral estoppel) applies is a question of law we review *de novo*. *Lutkauskas v. Ricker*, 2015 IL 117090, ¶ 43 (*res judicata*); *State Building Venture v. O'Donnel*, 239 Ill. 2d 151, 158 (2010) (collateral estoppel).

¶ 22 In more recent cases, our courts have more clearly distinguished among the two variations on the doctrine: "true" *res judicata* and collateral estoppel. *Res judicata*, claim preclusion, is known as "true" *res judicata*, whereas collateral estoppel is *res judicata* on a specific issue—issue preclusion. *Hayes v. State Teacher Certification Board*, 359 Ill. App. 3d 1153, 1161 (2005). The two doctrines serve the same fundamental purpose—to avoid subjecting parties to a litany of repetitious litigation. *Lutkauskas*, 2015 IL 117090, ¶ 44 (*res judicata*);

Illinois Health Maintenance Organization Guaranty Association v. Department of Insurance, 372 Ill. App. 3d 24, 35 (2007) (collateral estoppel).

¶ 23 *Res judicata* (claim preclusion) requires "(1) a final judgment on the merits rendered by a court of competent jurisdiction, (2) an identity of cause of action, and (3) an identity of the parties or their privies." *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 50. On the other hand, collateral estoppel requires that "(1) the issue decided in the prior adjudication is identical with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication." *Gumma v. White*, 216 Ill. 2d 23, 38 (2005). Before applying collateral estoppel, the court must " 'first determine [whether] the party against whom the estoppel is asserted had a full and fair opportunity and an incentive to litigate the issue in the prior proceeding.'" *Talarico v. Dunlap*, 281 Ill. App. 3d 662, 665 (1996).

¶ 24 The State, below, sought relief under claim preclusion. The circuit court appeared to rule on issue preclusion. In this instance, both doctrines would appear to apply. But it makes no difference to the outcome, for two reasons. First, Watson concedes that his claim would ordinarily be barred under some form of *res judicata*.

¶ 25 And second, whichever form of the doctrine applies, the courts will not apply it where principles of fundamental fairness require a relaxation of the doctrine. See *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 390 (2001) ("*Res judicata* will not be applied where it would be fundamentally unfair to do so."); *id.* at 391 ("even where the threshold elements of the doctrine are satisfied, collateral estoppel must not be applied to preclude parties from presenting their claims or defenses unless it is clear that no unfairness results to the party being estopped."). Courts will not apply *res judicata* when "it is clearly and convincingly shown that the policies

favoring preclusion of a second action are overcome for an extraordinary reason." *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 341 (1996) (quoting Restatement (Second) of Judgments § 26(1) (1980)) (cited as exception to claim-splitting).

¶ 26 Watson claims that this exception for "extraordinary" reasons is a reason to relax the doctrine's application here. See *Rein*, 172 Ill. 2d at 341. It is his burden to establish the application of this exception. *Venturella v. Dreyfuss*, 2017 IL App (1st) 160565, ¶ 32. This question, again, is subject to *de novo* review. *Dinerstein v. Evanston Athletic Clubs, Inc.*, 2016 IL App (1st) 153388, ¶¶ 32, 34 (*de novo* standard applied when trial court did not hold evidentiary hearing on whether specific exception applied and merely ruled on legal question).

¶ 27 In this case, under these specific circumstances, we believe that Watson has shown that *res judicata* should not be applied for extraordinary reasons—that doing so would result in fundamental unfairness. First, while it is true that a federal court concluded in writing that Watson's conviction fell within VOYRA, that decision was an unpublished minute order, construing a *pro se* complaint without the benefit of adversarial presentation—neither party weighing in—in an extremely brief analysis. It would be fair to say that Watson got less than a full and fair airing from the federal court on the substantive question.

¶ 28 Second, Watson was prosecuted in state court, where he obviously had the right to defend himself with any legal argument he wished to make, and the state-court judge agreed with Watson that VOYRA does *not* apply to his conviction. Illinois courts are not bound by federal court interpretations of Illinois statutes. *People v. Nance*, 189 Ill. 2d 142, 146 (2000); *Hanrahan v. Williams*, 174 Ill. 2d 268, 277 (1996); *People v. Kokoraleis*, 132 Ill. 2d 235, 293–94 (1989). And free to reach whatever conclusion it deemed correct, the state court disagreed with the federal decision.

¶ 29 And third, the State prosecuted Watson *again* for essentially the same offense. We say "essentially" because we can only assume, based on what we little we know at the pleading stage, that the State was prosecuting Watson for failing to re-up his registration with the State for a new annual period, thus constituting a new crime, and not the same one for which he was acquitted. The salient point, however, is that the State did not seem to find itself burdened by a state court's determination, in the first criminal prosecution, that VOYRA did not apply to Watson's conviction. So it prosecuted him again.

¶ 30 And for all we know, it may continue to prosecute him. Again, it is not even clear to us at the pleading stage whether Watson is still required to register, today, under VOYRA—that is, whether he is a lifetime registrant or subject to a certain duration of years that may have expired.

¶ 31 At this stage, we can only say that Watson seems to find himself in a situation where he appears to still face the threat of criminal prosecution, and he has persuaded at least one court, in a non-binding acquittal, that his reading of VOYRA is the correct one. Should Watson have to face yet another criminal prosecution before he gets a final resolution of this question?

¶ 32 And if, in fact, Watson's registration requirement has expired, that means he will *never* get another chance to litigate this question; he will have no further opportunity to seek a declaration that he is not a violent offender against youth—a fact that will follow him his whole life—even though a state court judge has made that very finding.

¶ 33 Under these quite unique set of facts, fundamental fairness dictates that Watson be given his day in court here. Or at least, the doctrine of *res judicata* should not be invoked to prevent that day in court.

¶ 34 The State has raised other issues, on the basis that we may affirm on any basis in the record. One of them is that Watson's action is barred by the five-year statute of limitations. The

circuit court understandably did not reach that question. While defendants are correct that we may reach other issues as a basis to affirm the judgment below, we are not required to decide issues on which the trial court did not rule. *Fredericks v. Liberty Mutual Insurance Co.*, 255 Ill. App. 3d 1029, 1036 (1994). And here, we decline to do so. Our preliminary review of the limitations issue suggests that it's a thorny one, and the briefing on that alternative ground before this court has been sparse. The parties should litigate that question—we would suggest more fully than they did before this court—on remand.

¶ 35 Because the limitations question could be dispositive, it would be imprudent to reach the underlying merits of this question of statutory interpretation.

¶ 36 We would finally note that we granted Watson's counsel leave to withdraw during the pendency of this appeal, so as things currently stand, Watson is proceeding *pro se*. The circuit court originally took steps to secure Watson a lawyer; we leave it to the circuit court to decide whether to do so again.

¶ 37 CONCLUSION

¶ 38 For these reasons, while we find no fault in the circuit court's determination that the elements of *res judicata* applied, fundamental fairness dictates that we not apply that doctrine under the unique facts of this case. The judgment of the circuit court is reversed, and the cause is remanded for further consideration.

¶ 39 Reversed and remanded.