2014 IL App (2d) 130989-U
No. 2-13-0989
Order filed July 14, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

POLICEMEN'S BENEVOLENT LABOR COMMITTEE,	)	Appeal from the Circuit Court of Kane County.
Plaintiff-Appellant,	)	
v.	)	No. 13-MR-463
PATRICK B. PEREZ and COUNTY OF KANE,	)	Honorable David R. Akemann,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Burke and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly dismissed, on *res judicata* grounds, plaintiff's complaint to compel arbitration of a grievance: although the collective bargaining units party to the present grievance and a prior grievance were different, plaintiff was the exclusive representative for both, and its attorney settled the prior grievance, with the settlement resolving the issue that plaintiff now sought to raise.

¶ 2 Plaintiff, the Policemen's Benevolent Labor Committee, filed an action to compel defendants, Kane County and Sheriff Patrick B. Perez, to arbitrate a grievance. The trial court dismissed the action on the ground that it was barred by a prior arbitration award. Plaintiff

appeals, contending that the earlier arbitration did not involve the same parties or the same subject matter. We affirm.

¶ 3 Plaintiff is the exclusive representative for all deputized corrections officers and sergeants employed by the Kane County sheriff's department. Plaintiff is also the exclusive representative for a separate bargaining unit consisting of deputized peace officers and sergeants. Each unit is a party to a separate collective bargaining agreement (CBA).

¶ 4 In 2011, the sheriff attempted to terminate deputy peace officer Jerry Krawczyk. Krawczyk filed a grievance pursuant to the deputy CBA, seeking reinstatement. The grievance resulted in an arbitration hearing being scheduled for December 8, 2011. That day, after extensive negotiations, the parties reached a settlement that was memorialized in a stipulated award. The award provided that Krawczyk would be rehired and transferred to the corrections division and that "[u]pon transfer his seniority will be portable and he will go into the new seniority unit carrying his seniority with him."

¶ 5 In the course of the proceedings, plaintiff's counsel, Timothy O'Neil, stated that "[t]he parties also discussed that these are two different separate collective bargaining units that have different agreements. If for some reason this award conflicts with the—something, which I can't imagine, in the Corrections Collective Bargaining agreement, then this will be done as a nonprecedential award."

¶ 6 Following Krawczyk's reinstatement and transfer, the president of the corrections unit filed a grievance on behalf of the entire unit, contesting the transfer of Krawczyk's seniority. This latter grievance was filed on January 18, 2012.

¶ 7 Plaintiff sought to proceed to arbitration on the corrections unit's grievance. Defendants refused, contending that the award resulting from Krawczyk's grievance precluded the second

grievance. Plaintiff thus sued to compel arbitration of the second grievance. Defendants moved to dismiss, again arguing that the settlement of the first grievance barred the second.

¶ 8 After the second grievance was filed, defendants sought clarification from the first arbitrator on what the term "seniority" in the stipulated award meant. In response, the arbitrator wrote the following:

> "Therefore it is clear the parties specifically *offered and agreed* that the Grievant's seniority shall be portable *between the seniority units*; and should a conflict arise with the Corrections CBA then '*this will be done* as a nonprecedential award.'
>
> The record reflects both parties agreed the Grievant's seniority would be merged into/with the Corrections CBA seniority on a nonprecedenting [*sic*] basis.
>
> Both parties during the process indicated they represented both the Union and the Sheriff's Office in both[]separate CBA's and seniority units." (Emphases in original.)

¶ 9 The trial court granted defendants' motion and dismissed the action. Plaintiff timely appeals.

¶ 10 On appeal, plaintiff argues that *res judicata* does not prevent arbitration of the second grievance because the parties and subject matter are not the same. It contends that, although it was a nominal party to both proceedings, the real parties in interest were the peace officers unit and the corrections unit, which are separate bargaining units subject to separate CBAs. Moreover, the issue in the first arbitration was whether Krawczyk's termination was proper, and the issue in the second proceeding was whether his seniority was properly transferred to the corrections unit. Plaintiff further asserts that the second grievance is not an impermissible collateral attack on a binding arbitration award, because the corrections unit was not a party to the first proceeding.

¶ 11 Defendants respond that *res judicata* applies because plaintiff was a party to both proceedings and, to the extent that the real parties in interest were the respective collective-bargaining units, plaintiff's counsel purported to represent both. Defendants further argue that a nonparty to an arbitration award may not collaterally attack it any more than can a party to the agreement. Finally, defendants assert that the grievance was untimely in any event.

¶ 12 The trial court granted defendants' motion filed pursuant to section 5/2-619(a)(4) of the Code of Civil Procedure (735 ILCS 5/2-619(a)(4) (West 2012)), which authorizes dismissal of an action where "the cause of action is barred by a prior judgment." We review *de novo* the dismissal of an action under section 2-619(a)(4). *Kiefer v. Rust-Oleum Corp.*, 394 Ill. App. 3d 485, 489 (2009).

¶ 13 Plaintiff argues that the present action is not barred by *res judicata*, because it does not involve the same parties or the same cause of action. *Res judicata* is an equitable doctrine designed to prevent a multiplicity of lawsuits between the same parties. *Id.* "*Res judicata* bars a subsequent action if (1) a final judgment on the merits was rendered by a court of competent jurisdiction, (2) there is an identity of parties or their privies, and (3) there is an identity of cause of action." *Matejczyk v. City of Chicago*, 397 Ill. App. 3d 1, 3 (2009). The burden of showing that *res judicata* applies is on the party invoking it. *Hernandez v. Pritikin*, 2012 IL 113054, ¶ 41.

¶ 14 *Res judicata* is divided into two branches: estoppel by judgment, sometimes referred to as *res judicata*, and estoppel by verdict, also known as collateral estoppel. Under the doctrine of estoppel by judgment, a final judgment may be asserted in bar of a second action where the parties and the cause of action are identical. *City of Hickory Hills v. Village of Bridgeview*, 67 Ill. 2d 399, 402 (1977). Causes of action are identical where the evidence necessary to sustain a second verdict would sustain the first, *i.e.*, where the causes of action are based upon a common

core of operative facts. *Res judicata* applies to arbitration awards as well as trial court judgments. "If the arbitration award is binding on the parties, any inquiry into the matters originally controverted is forever closed." *Rogers v. Holden*, 13 Ill. 293, 295 (1851). "A valid award has all the force of an adjudication, and precludes the parties from again litigating the same matters." *Merritt v. Merritt*, 11 Ill. 565, 569 (1850); *Herriford v. Boyles*, 193 Ill. App. 3d 947, 953 (1990).

¶ 15 Plaintiff concedes that an arbitration award can have a preclusive effect and that it was a named party in both proceedings. Nevertheless, it contends that *res judicata* does not apply here because it was not the real party in interest. Plaintiff in essence contends that it is no more than a conduit for pursuing grievances and that Krawczyk and the peace officers' unit were the real parties in interest in the first action, while the corrections unit was the real party in interest in the present proceeding. We disagree.

¶ 16 According to the arbitrator's recollection, O'Neil, the attorney who represented Krawcyzk at the first arbitration, expressly stated that he represented both bargaining units in that proceeding or, in the arbitrator's words, "in both[]separate CBA's and seniority units." Plaintiff points to nothing to the contrary. At oral argument, plaintiff did not dispute that O'Neil claimed to represent both bargaining units.

¶ 17 The only reasonable conclusion from this is that the corrections unit was a party, or at least in privity with a party, to the first arbitration. Plaintiff, the exclusive bargaining representative for both units, was a named party to that action. O'Neil, the attorney appearing for plaintiff, expressly claimed to represent both units. It is not clear from the record whether O'Neil consulted with anyone from the corrections unit and obtained its express authorization for

the agreement but, in any event, a party is bound by its attorney's actions. *Horwitz v. Holabird & Root*, 212 Ill. 2d 1, 9 (2004).[1]

¶ 18 Even absent an express acknowledgement, plaintiff is the sole representative for both bargaining units. To be a party to an action for *res judicata* purposes, one need not be named as such. Rather, the key question is whether the party sought to be bound by the previous judgment had a full and fair opportunity to litigate the issue in question. *Herriford*, 193 Ill. App. 3d at 953. *Res judicata* may also be invoked against a nonparty to a prior action if it was in privity with a party to that action. *Johnson v. Nationwide Business Forms, Inc.*, 103 Ill. App. 3d 631, 634 (1981). One way that parties may be in privity with each other is when they are represented by the same attorneys. *Id.* at 635. Plaintiff, through its attorneys, represented the grievants in both proceedings. A lawyer is prohibited from representing clients with adverse interests absent informed consent. Ill. R. Prof Conduct 1.7 (eff. Jan. 1, 2010). With the exception of one case that we discuss below, plaintiff cites no authority for the proposition that it may change hats in this fashion, choosing to represent only one unit or the other in a given proceeding. Thus, it was reasonable for defendants and the arbitrator to conclude that plaintiff, through its attorney, represented the interests of both bargaining units.

[1] Of course, Illinois courts require that an attorney have express authority to settle a case. *Horwitz*, 212 Ill. 2d at 9. Thus, in *Blutcher v. EHS Trinity Hospital*, 321 Ill. App. 3d 131 (2001), the court vacated a settlement after the plaintiff asserted that it was made without his authorization. There, however, the plaintiff affirmatively asserted that he did not authorize the settlement. Plaintiff here makes no such claim. Moreover, the plaintiff in *Blutcher* moved to vacate the settlement. Plaintiff here filed a second grievance that was essentially a collateral attack on the first award.

¶ 19 The only case that plaintiff cites, *Board of Education of Meridian Community Unit School District 101 v. Meridian Education Ass'n*, 112 Ill. App. 3d 558 (1983), is distinguishable. There, the Meridian Education Association (MEA) sought to bring a grievance on behalf of substitute teachers. The court noted that the substitutes were not parties to the CBA (and apparently did not have a separate agreement) and thus had no right to bring a grievance at all. Although the MEA signed the CBA, it did not do so as a representative of the substitute teachers. *Id.* at 563. *Meridian* does not support plaintiff's assertion that it could not or did not represent the corrections unit in the first proceeding.

¶ 20 Plaintiff further argues that its action should not be barred because the causes of action are not the same. It contends that the issue in the first action was whether Krawczyk's termination was proper, whereas the issue in the second proceeding was whether it was proper to transfer his seniority to the corrections unit. However, the bar extends to all issues actually decided in the earlier proceeding. *Decatur Housing Authority v. Christy-Foltz, Inc.*, 117 Ill. App. 3d 1077, 1082 (1983). Clearly, it was actually decided in the first proceeding that Krawczyk's seniority would be portable. The parties expressly provided for the possibility that transferring his seniority might contravene some provision of the corrections CBA. Thus, the issue that plaintiff now seeks to raise was actually decided in the earlier arbitration. It makes no difference that the issue was decided by the parties themselves in a settlement rather than following a contested hearing. See *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 61 (2011) (dismissal following settlement was an adjudication on the merits for *res judicata* purposes).

¶ 21 Because of our disposition of this issue, we need not decide whether the second action was an impermissible collateral attack on a final arbitration award or whether the grievance was timely filed.

¶ 22 The judgment of the circuit court of Kane County is affirmed.

¶ 23 Affirmed.