

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

James E. Holt,	:	
	:	
Plaintiff-Appellant,	:	No. 10AP-214
	:	(C.C. No. 2008-05664)
v.	:	
	:	
State of Ohio et al.,	:	(REGULAR CALENDAR)
	:	
Defendants-Appellees.	:	

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D E C I S I O N

Rendered on December 30, 2010

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*James E. Holt*, pro se.

*Richard Cordray*, Attorney General, *Susan M. Sullivan* and  
*Stephanie Pestello-Sharf*, for appellees.

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APPEAL from the Court of Claims of Ohio.

McGRATH, J.

{¶1} Plaintiff-appellant, James E. Holt ("appellant"), appeals from a judgment of the Court of Claims of Ohio in favor of defendants-appellees, State of Ohio ("the state") and the Ohio Department of Youth Services ("DYS") (collectively "appellees"). For the following reasons, we affirm the judgment of the Court of Claims.

{¶2} Appellant began working as a correctional officer for DYS in 1977. On January 23, 2004, appellant was accused of using excessive force on a juvenile in the care and custody of DYS. Several days later, he was placed on paid administrative leave. On February 9, 2004, appellant was approved for disability leave for the condition

of high blood pressure. On March 2, 2004, a pre-disciplinary hearing was held regarding the excessive force complaint, and on March 24, 2004, appellant's employment was terminated.

{¶3} On May 2, 2008, appellant filed the instant action in the Court of Claims, asserting claims for: infliction of emotional distress (Count I), a violation of 42 U.S.C. 1981 (Count II), "bad faith breach of contract" (Count III), "bad faith breach of employment relationship" (Count IV), "breach of employment relationship in violation of statutory law and public policy" (Count V), and promissory estoppel (Count VI).

{¶4} Appellees answered appellant's complaint and subsequently moved for summary judgment. In their motion, appellees' primary argument was that appellant's claims were barred by the doctrine of res judicata based upon the outcome of a case that appellant filed in federal court against the state, DYS, the Ohio Civil Service Employees Association, and various DYS employees. In that case, the district court found that appellant had not made a prima facie case of age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. 621. *Holt v. State* (Jan. 4, 2008), S.D.Ohio No. 2:05-cv-0894, Opinion and Order. The Sixth Circuit affirmed that decision. *Holt v. State* (C.A.6 Mar 4, 2009), No. 08-3181, Order. In addition to res judicata, appellees argued: (1) the Court of Claims lacked jurisdiction to consider the constitutional argument presented in Count I of appellant's complaint; (2) appellant's emotional distress claims fail because the federal courts have already determined that appellant was properly terminated and, even if that were not the case, case law holds that termination of employment does not rise to the level of extreme and outrageous conduct to prove infliction of emotional distress; (3) the only contract that applies in this case is the union

contract/collective bargaining agreement, over which the Court of Claims has no jurisdiction; (4) appellant's claim for promissory estoppel fails because, as a general rule, such does not apply against the state; (5) appellant's claim for wrongful discharge in violation of public policy fails because federal and state law provide appellant with complete relief.

{¶5} Appellant filed a response to appellees' motion for summary judgment, attacking appellees' arguments. We note that appellant did not, however, attach any Civ. R. 56 evidence to his memorandum contra.

{¶6} The trial court granted appellees' motion for summary judgment. The court found:

[T]he facts alleged in plaintiff's complaint arise out of the occurrence that was the subject matter of the case which he filed in federal court, namely, his termination from employment. Accordingly, the court finds that the doctrine of res judicata bars plaintiff's claims in this case. Consequently, there are no genuine issues of material fact and defendants are entitled to judgment as a matter of law.

Additionally, to the extent that plaintiff now alleges that his constitutional and civil rights were violated, it is well-settled that such claims are not actionable in the Court of Claims. \* \* \* Therefore, Count II of plaintiff's complaint, wherein he asserts a violation of his civil rights pursuant to 42 U.S.C. 1981 must fail.

Similarly, inasmuch as Counts III and IV of plaintiff's complaint set forth claims of breach of his union contract, the Court of Claims lacks jurisdiction over such actions. \* \* \* Defendants are also entitled to judgment as a matter of law as to Count VI of plaintiff's complaint alleging promissory estoppel, inasmuch as plaintiff has not identified any promise made to him by his employer, apart from those contained in his union contract.

Count V of plaintiff's complaint asserts claims of employment discrimination in violation of public policy. The Supreme Court

of Ohio has held that a common-law tort claim for wrongful discharge in violation of Ohio's public policy does not exist where statutory remedies such as R.C. 4112 provide complete relief. \* \* \* In this case, both federal and state laws against age, race, and disability discrimination provide complete relief and therefore, plaintiff cannot state a claim for wrongful discharge. Moreover, plaintiff's employment was governed by a collective bargaining agreement. The public policy tort is available only to at-will employees.

Lastly, Count I of plaintiff's complaint asserts claims for negligent and/or intentional infliction of emotional distress. Ohio law does not recognize a cause of action for negligent infliction of emotional distress in the employment setting. \* \* \* Moreover, termination of employment, even if discriminatory, in and of itself cannot rise to the level of extreme and outrageous conduct required to prove intentional infliction of emotional distress. \* \* \* Plaintiff has not pleaded facts upon which the court can infer the level of conduct required to prove intentional infliction of emotional distress.

Construing the evidence most strongly in plaintiff's favor, the court finds that no genuine issues of material fact exist and that defendants are entitled to judgment as a matter of law. Defendants' motion for summary judgment shall be granted and judgment shall be rendered in favor of defendants.

(Feb. 8, 2010 Decision at 4-5.)

{¶7} Appellant appealed and assigns the following two assignments of error for our review:

[1.] THE JUDGE ERRED BY COMBINING THIS STATE CASE WITH A FEDERAL CASE THAT ARE SEPARATED BY RULES.

[2.] THE ELEVENTH AMENDMENT SOVEREIGN IMMUNITY PROHIBITS PRIVATE INDIVIDUALS FROM BRINGING SUIT AGAINST THE STATE AGENCIES IN FEDERAL COURT. THEREFORE RES JUDICATA DOES NOT APPLY.

{¶8} Because appellant's assignments of error are interrelated, we shall address them together. The gravamen of appellant's assignments of error is that the trial court erred in granting appellees' motion for summary judgment because, according to appellant, the doctrine of res judicata does not apply.<sup>1</sup> We disagree.

{¶9} Whether the doctrine of res judicata applies in a case is a question of law. Accordingly, our review of appellant's res judicata claim is de novo. *Prairie Twp. Bd. of Trustees v. Ross*, 10th Dist. No. 03AP-509, 2004-Ohio-838, ¶12; *Nye v. Ohio Bd. of Examiners of Architects*, 165 Ohio App.3d 502, 2006-Ohio-948, ¶12, citing *Ross* at ¶12; *Nationwide Ins. Co. v. Davey Tree Expert Co.*, 166 Ohio App.3d 268, 2006-Ohio-2018, ¶15. "[D]e novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." *Koehring v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. No. 06AP-396, 2007-Ohio-2652, ¶10, quoting *BP Communications Alaska, Inc. v. Cent. Collection Agency* (2000), 136 Ohio App.3d 807, 812, dismissed, appeal not allowed 89 Ohio St.3d 1464, citing *Hall v. Ft. Frye Loc. School Dist. Bd. of Edn.* (1996), 111 Ohio App.3d 690, 694. See also *Hicks v. Leffler* (1997), 119 Ohio App.3d 424, 427 (stating that de novo review requires an appellate court to review a judgment independently without deferring to the trial court).

{¶10} The doctrine of res judicata precludes "relitigation of a point of law or fact that was at issue in a former action between the same parties and was passed upon by a court of competent jurisdiction." *Reasoner v. Columbus*, 10th Dist. No. 04AP-800, 2005-Ohio-468, ¶5, citing *State ex rel. Kroger Co. v. Indus. Comm.*, 80 Ohio St.3d 649, 651,

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<sup>1</sup> Appellant advances several reasons why he believes that res judicata does not apply. These reasons, however, have no legal merit and demonstrate a misunderstanding of the doctrine. Res judicata is a complex legal principle and we sympathize with appellant, who is proceeding pro se.

1998-Ohio-174. In order to apply the doctrine of res judicata, we must conclude the following: "(1) there was a prior valid judgment on the merits; (2) the second action involved the same parties as the first action; (3) the present action raises claims that were or could have been litigated in the prior action; and (4) both actions arise out of the same transaction or occurrence." *Reasoner* at ¶5, citing *Grava v. Parkman Twp.* (1995), 73 Ohio St.3d 379, 380-82, 1995-Ohio-331.

{¶11} The doctrine of res judicata has two aspects: claim preclusion and issue preclusion. *Grava* at 380. Claim preclusion holds that a valid, final judgment on the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action. *Id.* at syllabus. Issue preclusion, also known as collateral estoppel, provides that "a fact or a point that was actually and directly at issue in a previous action, and was passed upon and determined by a court of competent jurisdiction, may not be drawn into question in a subsequent action between the same parties or their privies, whether the cause of action in the two actions be identical or different." *Ft. Frye Teachers Assn. v. State Emp. Relations Bd.*, 81 Ohio St.3d 392, 395, 1998-Ohio-435. While claim preclusion precludes relitigation of the same cause of action, issue preclusion precludes relitigation of an issue that has been actually and necessarily litigated and determined in a prior action. *Id.*, citing *Whitehead v. Gen. Tel. Co.* (1969), 20 Ohio St.2d 108, 112.

{¶12} In *Thompson v. Wing*, 70 Ohio St.3d 176, 1994-Ohio-358, the Supreme Court of Ohio set forth three requirements for application of collateral estoppel or issue preclusion. "Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of

competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action." *Id.* at 183, citing *Whitehead*, paragraph two of the syllabus. "The essential test in determining whether the doctrine of collateral estoppel is to be applied is whether the party against whom the prior judgment is being asserted had full representation and a 'full and fair opportunity to litigate that issue in the first action.' " *Cashelmara Villas Ltd. Partnership v. DiBenedetto* (1993), 87 Ohio App.3d 809, 813, quoting *Hicks v. De La Cruz* (1977), 52 Ohio St.2d 71, 74.

{¶13} Upon review, we find that the trial court was correct in finding that appellant's claims are barred. First, the disposition of the case filed by appellant in federal court constitutes a prior valid judgment on the merits. In that case, the district court found that appellant had not made a prima facie case of age discrimination in violation of the Age Discrimination in Employment Act, 29 U.S.C. 621. See *Holt v. State* (Jan. 4, 2008), S.D.Ohio No. 2:05-cv-0894, Opinion and Order, affirmed by *Holt v. State* (C.A.6 Mar 4, 2009), No. 08-3181, Order. As a result of that determination, Counts II, III, IV, and V of appellant's complaint, all of which allege that the state acted improperly when it terminated appellant's employment, cannot stand. Second, although the state was not a party in the federal case, individual state actors were parties. Thus, with respect to res judicata, an identity of interests, as well as privity, exists. Third, the claims raised in this action were claims that were raised or could have been raised in appellant's federal action. And, lastly, both actions arise out of the same occurrence and transaction, that being, appellant's termination.

{¶14} Although the doctrine of res judicata operates as a bar to all of appellant's claims, we further note that we do not find any error in the trial court's additional analysis

of the individual counts asserted in appellant's complaint. Nor does appellant challenge the trial court's findings regarding the same. Based on the foregoing, appellant's first and second assignments of error are overruled.

{¶15} Having overruled appellant's two assignments of error, we affirm the judgment of the Court of Claims of Ohio.

*Judgment affirmed.*

KLATT and SADLER, JJ., concur.

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