Circuit Court for Baltimore City
Case No. 24-C-18-005167

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3487

September Term, 2018

ROBERT KING

v.

ROBERT NEALL

Reed,
Friedman,
Alpert, Paul E.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Alpert, J.

Filed: August 27, 2020

In the Circuit Court for Baltimore City, Robert King, appellant, a patient at the Clifton T. Perkins Hospital Center ("Perkins"), filed suit against Robert Neall, the Secretary of the Maryland Department of Health ("the Department") and other State personnel at Perkins,[1] appellees, asserting claims arising under the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101-12117, the Maryland Declaration of Rights, the federal constitution, and Maryland statutory and common law. The Department moved to dismiss the complaint on several grounds, including that the claims all were barred by *res judicata*; that certain claims were barred by the applicable statute of limitations; and that the complaint failed to state a claim upon which relief may be granted. The circuit court granted the motion to dismiss, with prejudice, for failure to state a claim upon which relief could be granted and on limitations grounds.

Mr. King appeals, presenting two questions,[2] which we have combined and rephrased as one: Did the circuit court err by dismissing the complaint with prejudice? We answer that question in the negative and so affirm.

[1] The other defendants/appellees are: Christopher Irwin, the CEO of Perkins; Marian Fogan, the COO of Perkins; Inna Taller, M.D., the Clinical Director at Perkins; Aram Faramarz Mokhtari Aria, M.D., a psychiatrist at Perkins; Chandra Wiggins, a Perkins employee with the Work Adjustment Program; Thomas Lewis, and Wayne Noble, unspecified employees of Perkins. For ease of discussion, we shall refer to the appellees collectively as the Department.

[2] The questions as posed by Mr. King are:

> 1. Does 28 U.S.C.S. [sic] § 1367(d) and Maryland Rule 2-101(b) overcome the statutory limitations of [Md. Code Ann., State Gov't] § 20-1013(a)(3)?

(Continued…)

FACTS AND PROCEEDINGS[3]

On December 10, 1998, Mr. King was admitted to Perkins, a psychiatric hospital facility operated by the Department. On May l4, 1999, he was found not criminally responsible and he was remanded to Perkins for care and treatment.

In early 2016, Mr. King applied to participate in a treatment program known as the Work Adjustment Program, which places patients in jobs and pays them minimum wage. On March 18, 2016, he filed a grievance claiming that he had been waiting 7 to 8 months for a placement and that the delay amounted to discrimination. The Department responded to Mr. King's grievance and, on April 5, 2016, a Perkins employee advised Mr. King that he had been placed in a job with the horticulture program. The following day, however, the horticulture program supervisor informed Mr. King that he would need a doctor's note to participate in the program due to his urinary incontinence. Mr. King met with his treatment team at Perkins and they informed Mr. King that he would be limited to five hours of work per week and that "if his disabilities interfered with the job, then he would not be allowed to work." Thereafter, on April 12, 2016, Mr. King was informed that his treatment team had decided that the horticulture program was not an

(…continued)

2. Did the Appellant state a claim upon which relief can be granted?

[3] Because this appeal arises from the grant of a motion to dismiss, we present the facts as alleged in Mr. King's complaint in the light most favorable to him and make all reasonable favorable inferences in his favor. *See State Center, LLC v. Lexington Charles Ltd. P'ship*, 438 Md. 451, 496-97 (2014).

appropriate placement for him. Mr. King instead was offered a work placement in Perkins's canteen for 1.5 hours per week, with no restroom facilities nearby.

A. The Federal Lawsuit

On November 21, 2016, Mr. King filed suit in the United States District Court for the District of Maryland against Van T. Mitchell, the then Secretary of the Department, and other State personnel at Perkins ("the federal lawsuit").[4] He alleged the same facts as set forth above, though with some additional detail. Mr. King asserted that the defendants violated Titles I and III of the ADA by terminating him from his position in the horticulture program due to his disability of urinary incontinence; by refusing to offer him a reasonable accommodation – access to restroom facilities – that would permit him to perform the job; by otherwise denying him reasonable access to restroom facilities; and by refusing to place him in an alternative equivalent position at Perkins. He sought compensatory and punitive damages, declaratory relief, injunctive relief, unconditional release from Perkins, and attorneys' fees.

The defendants moved to dismiss the federal lawsuit for failure to state a claim under the ADA. On August 30, 2017, the district court issued a memorandum opinion and order granting the motion to dismiss Mr. King's claims with prejudice, with the exception of his claim for injunctive relief, which was dismissed without prejudice and with leave to amend for 21 days.

[4] The federal defendants were identical to or held the identical positions as the defendants in the instant action.

Mr. King noted an appeal from the judgment and filed an amended complaint. His appeal was dismissed as having been taken from a non-final order. In his amended complaint, Mr. King specified that the injunctive relief he sought included construction of additional restroom facilities at Perkins and an order enjoining the locking of restrooms on medium and maximum-security wards. On August 10, 2018, the district court granted the defendants' motion to dismiss the amended complaint with prejudice.

Mr. King appealed that judgment to the United States Court of Appeals for the Fourth Circuit. On January 1, 2019, the Fourth Circuit affirmed the district court judgment by an unpublished *per curiam* opinion and, on March 11, 2019, it denied his petition for rehearing and rehearing *en banc*. On October 7, 2019, Mr. King's petition to proceed in forma pauperis before the Supreme Court was denied and his petition for writ of *certiorari* was dismissed. *King v. Neall*, __ U.S. __, 140 S.Ct. 210 (2019).

B. The State Lawsuit

On September 13, 2018, after the district court dismissed his amended complaint in the federal lawsuit, Mr. King filed this lawsuit, naming the same (or equivalent) defendants and alleging the same facts. In Counts I and II of his complaint, Mr. King reasserted his ADA claims. In Count III, he asserted that the defendants inflicted cruel and unusual punishment upon him in violation of Articles 16 and 25 of the Maryland Declaration of Rights, and the Eighth Amendment to the federal constitution by their discriminatory conduct. In Count IV, he asserted that the defendants, by the same conduct, infringed upon his rights to due process and equal protection of the laws, in

violation of the Fifth and Fourteenth Amendments to the federal constitution. In Count V, Mr. King asserted claims for intentional infliction of mental, emotional, and physical pain, suffering, anguish and distress, in violation of the ADA and Md. Code Ann., Health Gen. § 10-701 (2015 Repl. Vol.).[5] In Count VI, Mr. King asserted a claim for negligent supervision. Mr. King sought compensatory and punitive damages under each count. He also requested injunctive relief, specifically the unlocking of certain restroom facilities at Perkins and the construction of additional restroom facilities.

On December 21, 2018, the Department moved to dismiss the complaint arguing that all the claims were barred by *res judicata*; that Mr. King's claims under Title I of the ADA also were barred by the applicable statute of limitations; and that all counts failed to state a claim upon which relief could be granted. It attached the pertinent documents from the federal lawsuit. The Department maintained that *res judicata* barred all of Mr. King's claims because they arose from a common nucleus of facts; that the parties to the state and federal lawsuits were identical;[6] that all the claims could have been asserted in the federal lawsuit either because they arose under federal law or because the district court could have exercised supplemental jurisdiction over the claims pursuant to 28 U.S.C. §

[5] That statute provides, in relevant part, that a person in a mental health facility in Maryland shall "[b]e free from mental abuse[,]" which is defined as a "persistent course of conduct resulting in or maliciously intended to produce emotional harm." Md. Code. Ann., Health Gen. § 10-701(a)(4)(i) & (c)(6).

[6] The Department noted that Mr. King sued the Secretary of the Department and the CEO and COO of Perkins and that though the persons appointed to those positions had changed, Mr. King's claims were against the office, not the individuals.

1367(a);[7] and that the district court's dismissal of Mr. King's complaint and amended complaint with prejudice amounted to a final judgment on the merits of his claims. Further, the Department argued that Mr. King's claim under Title I of the ADA for employment discrimination was barred by statute of limitations applying to the analogous state law claim, which required that such a claim be brought within two years of the alleged discriminatory conduct. *See* Md. Code Ann., State Gov't § 20-606 (2014 Repl. Vol., 2017 Supp.) (making it unlawful for an employer to discriminate against an employee based upon his or her disability); State Gov't § 20-1013(a)(3) (civil complaint alleging discrimination in employment must be brought "within 2 years after the alleged unlawful employment practice occurred"). The Department maintained, in the alternative, that Mr. King failed to state a claim under the ADA; for cruel or unusual punishment; for an equal protection or due process violation; for intentional infliction of emotional distress; or for negligent supervision.

Mr. King did not oppose the motion.

On January 23, 2019, the circuit court granted the motion to dismiss with prejudice, ruling that Mr. King failed to state a claim upon which relief may be granted

[7] That statute provides, in relevant part, that if a district court has original jurisdiction over some claims in a civil action, it "shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a). The district court may decline to exercise supplemental jurisdiction under certain circumstances. 28 U.S.C. § 1367(c).

and that his claims were barred by the applicable statute of limitations set forth at State Gov't § 20-1013(a)(3).

This timely appeal followed. We shall include additional facts as necessary to our resolution of the issues.

STANDARD OF REVIEW

This Court reviews a trial court's decision to grant a motion to dismiss *de novo*. *Bradley v. Bradley*, 214 Md. App. 229, 234 (2013). We "'accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party.'" *Sprenger v. Pub. Serv. Comm'n of Md.*, 400 Md. 1, 21 (2007) (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). "'Dismissal is proper only if the alleged facts and permissible inferences, so viewed, would, if proven, nonetheless fail to afford relief to the plaintiff.'" *Pendleton v. State*, 398 Md. 447, 459 (2007) (quoting *Ricketts v. Ricketts*, 393 Md. 479, 492 (2006) (citation omitted)). We may "affirm the dismissal . . . on 'any ground adequately shown by the record, whether or not relied upon by the trial court[.]'" *Parks v. Alpharma, Inc.*, 421 Md. 59, 65 n.4 (2011) (quoting *City of Frederick v. Pickett*, 392 Md. 411, 424 (2006), in turn quoting *Berman v. Karvounis*, 308 Md. 259, 263 (1987)).

DISCUSSION

Mr. King contends that the circuit court erred by ruling that his complaint was barred by limitations. He asserts that because he filed this lawsuit while his federal lawsuit was pending on appeal and because he filed the federal lawsuit within 2 years of

the alleged discriminatory conduct, that the statute of limitations was tolled as to his claims pursuant to Rule 2-101(b).[8] He argues, moreover, that his complaint "contains all of the necessary elements needed to show claims upon which relief can and should be granted."

The Department responds that this Court can affirm the circuit court judgment on all counts on the ground that the claims are barred by *res judicata* or on the bases relied upon by the circuit court. We agree.

"Under Maryland Law, the requirements of *res judicata* or claim preclusion are: 1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; 2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and 3) that there was a final judgment on the merits." *Colandrea v. Wilde Lake Comm. Ass'n., Inc*., 361 Md. 371, 392 (2000) (citations omitted). "When a federal court renders a final judgment, [however,] generally the judgment's preclusive effect is determined by federal law." *Anne Arundel Cty. Bd. of*

[8] That rule provides:

> Except as otherwise provided by statute, if an action is filed in a United States District Court or a court of another state within the period of limitations prescribed by Maryland law and that court enters an order of dismissal (1) for lack of jurisdiction, (2) because the court declines to exercise jurisdiction, or (3) because the action is barred by the statute of limitations required to be applied by that court, an action filed in a circuit court within 30 days after the entry of the order of dismissal shall be treated as timely filed in this State.

Educ. v. Norville, 390 Md. 93, 108 (2005) (citing *Shoup v. Bell & Howell Co*., 872 F.2d 1178, 1179 (4th Cir. 1989)). Federal courts apply an analogous test for claim preclusion:

> (1) identical parties, or parties in privity, in the two actions; (2) the claim in the second matter is based upon the same cause of action involved in the earlier proceeding; and, (3) a prior and final judgment on the merits, rendered by a court of competent jurisdiction in accordance with due process requirements.

Id. (citing *Grausz v. Englander*, 321 F.3d 467, 472 (4th Cir. 2003)). Thus, the Court of Appeals has reasoned that "[w]hether the final judgment is pronounced by a federal court or a state court, its preclusive bar extends to any theory arising out of the same claim." *Id*.

Here, the parties to the present litigation are the same or equivalent to those named as defendants in the federal lawsuit.

The second prong – that the current litigation is "based upon the same cause of action" – also is satisfied. *Res judicata* bars the relitigation of claims actually litigated in a prior lawsuit *and* those which "*could have been* decided fully and fairly." *Id.* at 107 (emphasis in original). The doctrine thus "protects the courts, as well as the parties, from the attendant burdens of relitigation." *Id*. The Court of Appeals has "adopted the transactional test" set forth in § 24 of the Restatement (Second) of Judgments[9] to

[9] The Restatement provides in pertinent part:

> (2) What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their

(Continued…)

determine if a matter not directly ruled upon in prior litigation nevertheless "'was fairly included within the claim or action that was before the earlier court and could have been resolved in that court.'" *Id*. at 108 (quoting *FWB Bank v. Richman*, 354 Md. 472, 493 (1999)). Under that approach, "if the two claims or theories are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously. Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Id*. at 109.

In the case at bar, Mr. King's claims in the federal lawsuit and in this case are based upon identical facts and arise from the exact same series of events. He alleges that he sought employment at Perkins through the Work Adjustment Program; was offered a position in the horticulture program; was later advised that his treatment team did not assent to him being placed in that job; and was offered a different job instead, though with much reduced hours. He further alleged that he was denied adequate and meaningful access to restroom facilities. He asserted that the Department discriminated against him based upon his urinary incontinence and failed to provide adequate access to restroom facilities to accommodate his disability. He sought identical relief in his federal and state cases, except for the request for declaratory relief which was made only in the federal lawsuit.

(…continued)

> treatment as a unit conforms to the parties' expectations or business understanding or usage.

Restatement (Second) of Judgments § 24.

To be sure, Mr. King has reformulated some of those claims to assert new theories under state and federal law. For example, he now asserts that the discriminatory conduct also amounted to cruel and unusual punishment, in violation of the federal constitution and the Maryland Declaration of Rights. Nevertheless, all of Mr. King's legal theories are grounded in the same fundamental claim that the Department's handling of his employment application was discriminatory under the ADA and all the claims could and should have been asserted in the federal lawsuit because they were subject to the exercise of the district court's original jurisdiction, *see* 28 U.S.C. § 1331, or its supplemental jurisdiction. *See* 28 U.S.C. § 1367. The claims all were "based on the same cause of action" and, thus, to the extent the dismissal of Mr. King's federal lawsuit was a final judgment on the merits, he is precluded from relitigating the claims in this action.

The dismissal of the federal lawsuit for failure to state a claim upon which relief may be granted, with prejudice, was a final judgment on the merits. *See Claibourne v. Willis*, 347 Md. 684, 692 (1997) (a "dismissal with prejudice . . . has the same *res judicata* effect as a final adjudication on the merits favorable to the defendant"); *Norville*, 390 Md. at 112 (federal court's dismissal of complaint for failure to state a claim upon which relief may be granted was a final adjudication on the merits).

Because we have concluded that this action is barred by *res judicata*, we need not decide if the action was barred by limitations or if Mr. King stated a claim upon which relief may be granted.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/3487s18cn.pdf