

STATE OF MICHIGAN  
COURT OF APPEALS

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CHIN TI LIN, M.D.,

Plaintiff-Appellant,

v

HURLEY MEDICAL CENTER BOARD OF  
HOSPITAL MANAGERS,

Defendant-Appellee.

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UNPUBLISHED  
September 20, 2005

No. 261918  
Genesee Circuit Court  
LC No. 04-080210-CZ

Before: Fitzgerald, P.J., and Cooper and Kelly, J.J.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in defendant's favor. We affirm.

I. Facts

Plaintiff, a urologist, applied for membership on the professional staff of Hurley Medical Center. With plaintiff's authorization, Hurley's medical staff coordinator made inquiries about plaintiff past performance. The responses, with one exception, were positive. The negative response, among other things, indicated that plaintiff lacked competence to perform percutaneous nephrostomies. The medical executive committee ultimately recommended to the board of hospital managers that staff privileges not be granted to plaintiff on the basis of "failure to demonstrate sufficient competence to practice his specialty without additional monitoring."

Plaintiff filed a lawsuit ("first action") alleging that defendant's failure to offer him an opportunity to be heard denied him procedural due process rights. Defendant subsequently afforded plaintiff a hearing, after which defendant upheld the denial of staff privileges. Plaintiff then filed a motion to amend the complaint to include allegations that defendant's decision to deny him staff privileges violated his substantive due process rights because it was arbitrary and capricious. Defendant filed a motion for summary disposition arguing that there was no genuine issue of material fact as to whether defendant provided plaintiff with an opportunity to be heard and as to whether its decision was arbitrary or capricious. The trial court denied plaintiff's motion to amend and granted defendant's motion for summary disposition. Plaintiff did not appeal these rulings.

Plaintiff then initiated the present action again alleging that defendant's denial of staff privileges was arbitrary and capricious. Defendant filed a motion for summary disposition arguing that plaintiff's claim was barred by res judicata and that plaintiff had no right under the Michigan or Federal constitutions to staff privileges. The trial court granted defendant's motion.

## II. Analysis

Plaintiff contends that his claim in the present action that defendant's denial of privileges was arbitrary and capricious is not barred by res judicata. We disagree. We review the applicability of the doctrine of res judicata de novo. *Pierson Sand & Gravel, Inc v KeeleBrass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to the facts or evidence in a prior action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first case; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994).

In plaintiff's first action, plaintiff alleged that defendant denied him due process because it did not hold a hearing before denying his request for staff privileges. After plaintiff filed the complaint, defendant conducted a full hearing on the matter and again denied his request for staff privileges. Plaintiff subsequently filed a motion to amend his complaint to add the claim that defendant's denial of plaintiff's request for staff privileges was arbitrary and capricious. The trial court, after reviewing the transcripts from that hearing, ruled that "there was competent, material and substantial evidence on the record to support the decision by the Hurley board." The court went further and determined that even if the motion to amend had been granted, the trial court would have granted defendant's motion for summary disposition under MCR 2.116(C)(10) because there was no evidence to support plaintiff's claim.

On the basis of this record, we conclude that plaintiff's claim in the present action that defendant's decision was arbitrary and capricious was (1) decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was resolved in the first case; and (4) both actions involved the same parties or their privies. *Kosiel, supra* at 379. Therefore, we affirm the trial court's ruling in the present action that plaintiff claim in this case was barred by res judicata. We need not address the other issue plaintiff has raised on appeal because our determination that res judicata bars plaintiff's claim resolves matter in its entirety.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jessica R. Cooper

/s/ Kirsten Frank Kelly