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STATE OF MICHIGAN
COURT OF APPEALS

AUBREY LYONS,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, STATE OF
MICHIGAN, WARDEN RANDALL HAAS,
LIEUTENANT GARY KELLY, CAPTAIN DALE
HOLCOMB, LIEUTENANT JAMES WEBSTER,
and SERGEANT ROBERT LOXTON,

Defendants-Appellees,

and

MACOMB CORRECTIONAL FACILITY,

Defendant.

Before: GLEICHER, P.J., and STEPHENS and CAMERON, JJ.

PER CURIAM.

In this action alleging employment discrimination and retaliation, plaintiff appeals as of right an order granting summary disposition in favor of defendants.¹ We affirm.

I. BACKGROUND

¹ Defendant Macomb Correctional Facility was not included as a defendant in plaintiff’s amended complaint and, thus, did not participate in the summary disposition proceedings at issue in this appeal. Our use of the term “defendants” in this opinion refers to appellees only.

This case involves several disciplinary investigations plaintiff was involved in between March 2014 and December 2015 during his employment at Macomb Correctional Facility. On April 25, 2017, plaintiff filed an amended complaint in the United States District Court for the Eastern District of Michigan alleging claims of disparate treatment, retaliation, and hostile work environment under Title VII of the federal Civil Rights Act of 1964, 42 USC 2000e *et seq.*, and violation of his equal-protection rights under 42 USC 1983. On January 17, 2018, plaintiff filed a separate lawsuit in state court wherein plaintiff alleged claims of racial discrimination and retaliation in violation of the Michigan Civil Rights Act (MCRA), MCL 37.2101 *et seq.* The district court dismissed plaintiff's federal case in March 2019. In pertinent part, the district court determined that plaintiff's disparate treatment claim failed because he had not identified a similarly situated person of a different race who was treated differently. Plaintiff's retaliation claim failed because he did not establish that the person who was responsible for imposing his one-day suspension for inattention to duty was aware that he had filed discrimination complaints against defendants James Webster and Robert Loxton.

Shortly after the district court dismissed plaintiff's federal case, defendants moved for summary disposition of plaintiff's MCRA claims. The trial court determined that under the doctrine of collateral estoppel, the district court's judgment barred plaintiff from relitigating the same issues in the context of his MCRA claims. It therefore granted defendants' motion on the basis of collateral estoppel.

II. STANDARD OF REVIEW

This Court reviews a trial court's ruling on a summary disposition motion de novo, as well as its application of legal doctrines like collateral estoppel. *Allen Park Retirees Ass'n, Inc v Allen Park*, 329 Mich App 430, 441, 443; 942 NW2d 618 (2019). "Summary disposition may be granted under MCR 2.116(C)(7) when a claim is barred by res judicata or collateral estoppel." *Id.* "A motion brought under MCR 2.116(C)(7) 'may be supported by affidavits, depositions, admissions, or other documentary evidence.'" *Id.* at 444, quoting *Trowell v Providence Hosp & Med Ctrs, Inc*, 502 Mich 509, 519 n 20; 918 NW2d 645 (2018). "All well-pleaded allegations are viewed in the light most favorable to the nonmoving party unless documentary evidence is provided that contradicts them." *Haksluoto v Mt Clemens Regional Med Ctr*, 500 Mich 304, 309; 901 NW2d 577 (2017). "If there is no factual dispute, the determination whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law." *Allen Park Retirees Ass'n*, 329 Mich App at 444; 942 NW2d at 626.

III. COLLATERAL ESTOPPEL

On appeal, plaintiff argues that the trial court erred by dismissing his case on the basis of collateral estoppel because the district court's judgment was not final while plaintiff's appeal of that decision remained pending. We disagree.

On May 4, 2020, the United States Court of Appeals for the Sixth Circuit affirmed the district court's decision dismissing plaintiff's federal claims. *Lyons v Mich Dep't of Corrections*, ___ F Appx ___ (CA 6, 2020) (Docket No. 19-1329). The period in which plaintiff had to seek further review by the United States Supreme Court has since expired. See 28 USC 2101(c) ("Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action,

suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree.”). The issue of whether the dismissal of plaintiff’s circuit court case was premature is therefore moot. *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018) (“An issue is moot when a subsequent event makes it impossible for this Court to grant relief.”); *Barrow v Detroit Election Comm*, 305 Mich App 649, 659; 854 NW2d 489 (2014) (“We generally do not address moot questions or declare legal principles that have no practical effect in a case.”).

Apart from challenging the finality of the district court’s judgment, plaintiff does not question whether collateral estoppel would otherwise bar his MCRA claims. Accordingly, we need not address the matter further. Nor is it necessary for us to consider the substantive merits of plaintiff’s MCRA claims, as the trial court properly granted summary disposition on the basis of collateral estoppel.²

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Cynthia Diane Stephens
/s/ Thomas C. Cameron

² As the trial court observed in its opinion and order granting defendants’ motion for summary disposition, the district court determined that plaintiff had not established that Jennifer Nanasy, a Michigan Department of Corrections discipline coordinator, was aware of plaintiff’s protected activities. Because this is an essential element of plaintiff’s retaliation claim, the district court’s earlier resolution of the issue in defendants’ favor effectively leaves plaintiff unable to establish his claim of retaliation under the MCRA. *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 161; 934 NW2d 665 (2019). See *B & B Hardware, Inc v Hargis Indus, Inc*, 575 US 138, 148; 135 S Ct 1293; 191 L Ed 2d 222 (2015), (“[W]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.”) (quotation marks and citation omitted); *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 528; 866 NW2d 817 (2014) (“Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in that prior proceeding.”).