

STATE OF MICHIGAN
COURT OF APPEALS

IONIA M. RICHARD,
Plaintiff-Appellant,

UNPUBLISHED
February 8, 2005

v

NORTHVILLE PSYCHIATRIC HOSPITAL,
KATHLEEN WILLIAMS, DEPARTMENT OF
COMMUNITY HEALTH, and THOMAS
ADAMS,

No. 244918
Ingham Circuit Court
LC No. 02-000525-CK

Defendants-Appellees.

ON REMAND

Before: Sawyer, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

Our Supreme Court has remanded this case for consideration of the question whether the circuit court properly dismissed plaintiff's civil rights claims pursuant to *Nummer v Dep't of Treasury*, 448 Mich 534; 533 NW2d 250 (1995). We conclude that the circuit court erred in so doing, reverse that portion of the circuit court's decision, and remand for further proceedings.

Plaintiff, an employee of a division of the Department of Community Health (DCH), resigned from an educational leave of absence and requested that her name be placed on the DCH recall list. Plaintiff's name was placed on the list, but then was removed when it was discovered that she had not provided all required information before taking the leave of absence. Plaintiff filed a grievance, the settlement of which resulted in her name being returned to the recall list. She returned to work briefly, but then resigned her employment.

Plaintiff, acting *in propria persona*, filed identical complaints in the circuit court and the Court of Claims alleging breach of contract, fraudulent misrepresentation under the Civil Rights Act (CRA), MCL 37.2101 *et seq.*, promissory estoppel, termination of employment contract, tortious interference with a contract, racial discrimination under the CRA, constructive discharge under the CRA, invasion of privacy, and intentional infliction of emotional distress under the CRA. The Court of Claims dismissed plaintiff's complaint in its entirety, reasoning that the settlement of plaintiff's grievance resolved all of her claims, and that the preclusion doctrine

prevented plaintiff from relitigating those claims in an original court action.¹ The circuit court, relying on the preclusion doctrine and the dismissal entered by the Court of Claims, dismissed plaintiff's action in its entirety and with prejudice.

On appeal, we affirmed the circuit court's decision, concluding that the doctrine of res judicata prevented plaintiff from relitigating her claims in circuit court after the Court of Claims dismissed them.² Our Supreme Court, in lieu of granting plaintiff's application for leave to appeal, remanded this matter for consideration of the question whether the circuit court properly dismissed plaintiff's civil rights claims pursuant to *Nummer, supra*. In all other respects our Supreme Court denied plaintiff's application for leave to appeal.

In general, for the doctrine of collateral estoppel to apply, a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment, the same parties must have had a full and fair opportunity to litigate the issue, and mutuality of estoppel must have existed. In addition, for collateral estoppel to apply based on an administrative decision, the decision must have been adjudicatory in nature and must have provided a right to appeal, and the Legislature must have intended to make the administrative decision final absent an appeal. *Id.* at 542.

On remand, we conclude that the circuit court erred by dismissing plaintiff's civil rights claims. The CRA neither expressly prohibits the application of a preclusion doctrine such as collateral estoppel to a case arising under the Act, nor implicitly proscribes the application of a preclusion doctrine to administrative determinations of civil rights claims. *Id.* at 547-549. Plaintiff filed a grievance after her name was removed from the DCH recall list. Her collective bargaining agreement afforded her the right to have a quasi-judicial hearing on the grievance; however, the hearing process, which included the right to appeal the final decision to circuit court, was truncated when plaintiff and her employer settled the grievance. The settlement agreement was equivalent to a consent judgment. Collateral estoppel does not apply to a consent judgment. The parties have not litigated the matters resolved by a consent judgment; rather, they have settled those issues. *Van Pembroke v Zero Mfg Co*, 146 Mich App 87, 102-103; 380 NW2d 60 (1985). The elements necessary for the application of collateral/administrative estoppel were not met in the resolution of plaintiff's grievance; therefore, the settlement of that grievance could not serve to preclude litigation of plaintiff's civil rights claims in circuit court. *Nummer, supra* at 556; *Van Pembroke, supra*.

We reverse the portion of the circuit court's decision dismissing plaintiff's civil rights claims pursuant to *Nummer, supra*, and remand for further proceedings consistent with this opinion. The record before us is not sufficiently specific to allow us to determine whether the settlement of plaintiff's grievance resolved all claims and would preclude further litigation of

¹ Plaintiff did not appeal the Court of Claims' decision.

² In addition, we rejected plaintiff's argument that the circuit court erred by dismissing her claims against the individual defendants for improper service of process.

plaintiff's civil rights claims under doctrines such as release or waiver. We express no opinion as to whether litigation of plaintiff's civil rights claims is barred on any other grounds.³

We affirm in part, reverse in part, and remand for consideration of plaintiff's civil rights claims only. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Richard A. Bandstra

³ However, we hold that the Court of Claims' decision dismissing plaintiff's action does not serve as an independent basis for the circuit court's dismissal of plaintiff's civil rights claims based on the doctrine of res judicata. 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). The Court of Claims has no subject matter jurisdiction over a claim based on the CRA. MCL 37.2801(1); *Neal v Dep't of Corrections (On Remand)*, 232 Mich App 730, 742; 592 NW2d 370 (1998). A court that lacks subject matter jurisdiction cannot litigate a party's claims. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 375; 689 NW2d 145 (2004). A Court of Claims' decision on the merits of plaintiff's civil rights claims would have been void, and could not have constituted the decision on the merits required for application of the doctrine of res judicata. *Kosiel, supra*.