

STATE OF MICHIGAN
COURT OF APPEALS

SETH MERLE,

Plaintiff-Appellant,

v

RICHARD HAGOPIAN,

Defendant-Appellee.

UNPUBLISHED

September 23, 2026

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No. 374692

Livingston Circuit Court

LC No. 24-032222-CH

Before: WALLACE, P.J., and CAMERON and KOROBKIN, JJ.

PER CURIAM.

Plaintiff, Seth Merle, appeals as of right the trial court’s order denying his motion for summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) and granting defendant’s, Richard Hagopian’s, motion for summary disposition under MCR 2.116(C)(7) (res judicata) and (8) (failure to state a claim). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Merle and Hagopian are neighbors with abutting properties. Merle has a barn at the back of his property that borders Hagopian’s property. Numerous trees stand on Hagopian’s side of the property line, and some of their branches extend over the property line. According to an expert retained by Merle, some of the trees were at risk of falling onto his property and causing damage within a year.

To resolve the issue, the parties entered into a written agreement under which Merle would hire someone to remove the trees, with each party contributing \$2,000 toward the cost of removal. The agreement provided that, in the event the work could not be performed, Merle was to return Hagopian’s \$2,000. When the trees were not removed and Merle had not returned his money, Hagopian filed a claim in small claims court. Merle filed a counterclaim, alleging Hagopian’s “negligence with tree care” caused him damages.

The district court awarded Hagopian \$2,000, plus costs, and dismissed Merle’s counterclaim with prejudice. The district court attached a short opinion to its order in which it represented that the order “fully and completely resolve[d] the matter between the parties

pertaining to trees” on Hagopian’s property, and that, if any of Hagopian’s trees fell and caused damage to Merle’s property, the damages were Merle’s sole responsibility.

Merle then filed suit in circuit court, alleging claims for nuisance, negligence, encroachment/trespass, declaratory relief, and injunctive relief. The parties then filed competing motions for summary disposition. Merle argued that there was no question of fact that Hagopian’s trees posed a danger to his property. Hagopian argued Merle’s claims were barred by the doctrine of res judicata. In response, Merle claimed that the district court’s decision was “baffling, to put it mildly[,]” because “the small claims lawsuit was based on refunding Hagopian’s \$2,000.00[,]” but “the issue as to the dangerousness of the trees was not before the small claims court.” Merle also argued that res judicata did not apply under the continuing wrongs doctrine.

The circuit court denied Merle’s motion and granted Hagopian’s motion. It took issue with Merle’s “disrespectful tone” regarding the district court’s decision with respect to the trees, noting that Merle continued to conveniently omit any mention of his own counterclaim that raised the issue in the district court in the first place. The circuit court concluded that the district court had decided the issue of Hagopian’s trees on the merits and that res judicata therefore applied. It also rejected Merle’s unsupported claims that district courts have no equitable powers whatsoever, and opined the continuing wrongs doctrine was inapplicable. Merle now appeals.

II. STANDARDS OF REVIEW

This Court reviews a trial court’s decision regarding a motion for summary disposition de novo. *King v Munro*, 329 Mich App 594, 598; 944 NW2d 198 (2019). “A trial court may grant summary disposition under MCR 2.116(C)(7) on the basis of either” res judicata or collateral estoppel. *Id.* “When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party.” *Id.* at 599 (quotation marks and citation omitted). “Collateral estoppel and res judicata present questions of law reviewed de novo by this Court.” *Id.*

Although Hagopian only moved for summary disposition under MCR 2.116(C)(7), the trial court indicated that dismissal of Merle’s claim for injunctive relief was appropriate under MCR 2.116(C)(8). “A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019) (emphasis omitted). “When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone.” *Id.* at 160. “A motion under MCR 2.116(C)(8) may only be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery.” *Id.*

III. ANALYSIS

Merle argues that the trial court erred by granting summary disposition to Hagopian on the basis of res judicata. We disagree.

“The purpose of the doctrine of res judicata is to prevent multiple suits litigating the same cause of action.” *King*, 329 Mich App at 600.

Under the doctrine of res judicata, a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand[,], or cause of action. [*Id.* at 600-601 (quotation marks and citation omitted).]

“The doctrine bars a second, subsequent action when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.” *Id.* at 601 (quotation marks and citation omitted). “Michigan courts apply the doctrine broadly to bar not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not.” *Id.* (quotation marks and citation omitted).

Merle argues that res judicata does not apply because his claims involve a continuing wrong. “A continuing wrong is established by continuing tortious acts[.]” *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 76 n 7; 577 NW2d 150 (1998). The continuing-wrong doctrine is not an evergreen exception to res judicata. Rather, the key issue in this case is what these “continuing tortious acts” are. Merle contends that Hagopian had an ongoing duty to maintain his trees and his failure to do so constituted a new tortious act each day. Merle’s argument does not take root because the district court expressly rejected his argument that Hagopian was negligent based on Hagopian’s failure to maintain his trees. Indeed, the district court stated that, if one of Hagopian’s trees were to cause damage to Merle’s property, Merle was fully responsible for the damage. That ruling necessarily rested on the district court’s determination that Merle had failed to establish a prima facie case of negligence.¹ In other words, the district court’s opinion is entirely dependent on a finding that Hagopian’s conduct at issue—failing to maintain his trees—was not negligent.² Thus, while Merle characterizes Hagopian’s continued inaction as a continued failure to act, a new day does not necessarily make a new tort. The conduct Merle takes issue with is the exact same conduct that the district court already determined was not tortious. Merle cannot cultivate a new claim from the same allegedly negligent act. This finding on the merits was controlling and barred plaintiff’s circuit-court claims under res judicata.³

¹ “To establish a prima facie case of negligence, a plaintiff must prove four elements: (1) a duty owed by the defendant to the plaintiff, (2) a breach of that duty, (3) causation, and (4) damages.” *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

² Although it is unclear which element or elements Judge Murphy found to be lacking, the reasoning in her opinion indicates that the elements at issue were duty, breach, or both, given the fact that she explicitly ruled that, even if Hagopian’s tree did cause damage, Hagopian was not responsible.

³ Merle also claims that res judicata is inapplicable because the district court lacked jurisdiction to issue what was effectively a declaratory judgment guiding the parties’ future conduct. We need not address whether the district court had the authority to do this, however, because this part of the order is not what serves to bar Merle’s subsequent suit. As discussed, it can be inferred that the district court found Hagopian was not negligent in maintaining his trees—a finding that had

Affirmed.

/s/ Randy J. Wallace
/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin

nothing to do with the parties' future conduct. Accordingly, the district court's decision on the merits of this issue is valid and enforceable.