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DISTRICT II

September 24, 2014

To:

Hon. Jeffrey S. Froehlich
Circuit Court Judge
Calumet County Courthouse
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Chilton, WI 53014

Barbara Van Akkeren
Clerk of Circuit Court
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Donald A. Waas
2113 Railroad St.
New Holstein, WI 53061

You are hereby notified that the Court has entered the following opinion and order:

2013AP2888 Donald A. Waas v. City of New Holstein and the Cities Common Council (L.C. # 2013CV31)

Before Brown, C.J., Reilly and Gundrum, JJ.

Donald A. Waas appeals pro se from a circuit court order dismissing his complaint on summary judgment against the City of New Holstein and its Common Council. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. WIS. STAT. RULE 809.21 (2011-12).[1] We affirm the order of the circuit court.

In September 2011, Waas filed a petition seeking certiorari review of a rezoning by the City of New Holstein. The City rezoned several parcels of land for use and expansion by the

[1] All references to the Wisconsin Statutes are to the 2011-12 version.

feed mill, Calumet Feeds. Waas' petition named members of the City's Common Council as respondents and sought reversal of the rezoning as well as a court order to dismantle existing structures at the feed mill. The circuit court denied the petition. This court affirmed that denial. ***Waas v. Woelfel***, No. 2012AP671, unpublished op. and order (WI App Nov. 21, 2012).

In February 2013, Waas filed a complaint alleging that the City of New Holstein and its Common Council had disregarded the law with the rezoning of Calumet Feeds and had violated Waas' constitutional rights to due process and equal protection. The City and Common Council denied the allegations and moved for summary judgment. Following a hearing on the matter, the circuit court granted the motion, determining that Waas' complaint was "a rehash of claims" from his earlier suit. This appeal follows.

We review a grant of summary judgment using the same methodology as the circuit court. ***Green Spring Farms v. Kersten***, 136 Wis. 2d 304, 314–15, 401 N.W.2d 816 (1987). Summary judgment is proper when there are no genuine issues of material fact and one party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

On appeal, Waas contends that the circuit court erred in dismissing his complaint on summary judgment. He submits that his complaint was different than his petition for certiorari review and should have been allowed to go forward. We disagree and conclude that the doctrine of claim preclusion barred Waas' complaint.

Under the doctrine of claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings." ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995) (citation omitted). There are three elements

required to establish claim preclusion: "(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and (3) a final judgment on the merits in a court of competent jurisdiction." ***Id.*** at 551.

Here, the facts meet these elements. First, an identity between the parties exists in the prior and present suits, as both suits name members of New Holstein's Common Council as defendants/respondents. Second, an identity between the causes of action exists, as both suits involve purported improper improvements to Calumet Feeds and an improper and unconstitutional rezoning.[2] Finally, the previous suit has a final judgment on the merits. Given these facts, the circuit was correct in dismissing Waas' complaint on summary judgment.[3]

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals

[2] Although the scope of certiorari review is limited, Waas could have raised his constitutional concerns in his first suit when arguing that the rezoning was arbitrary, oppressive, or unreasonable. *See* ***Hanlon v. Town of Milton***, 2000 WI 61, ¶14, 235 Wis. 2d 597, 612 N.W.2d 44.

[3] To the extent we have not addressed an argument raised by Waas on appeal, the argument is deemed rejected. *See* ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978) ("An appellate court is not a performing bear, required to dance to each and every tune played on an appeal.").