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February 19, 2019

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

2018AP161

Matthew Tyler v. Robert Kneepkens (L.C. # 2017CV188)

Before Sherman, Kloppenburg and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Matthew Tyler, pro se, appeals a circuit court order that dismissed Tyler's action against State officials for damages and injunctive relief based on Tyler's claims of loss of money and property while a patient at Sand Ridge Secure Treatment Center. Based upon our review of the

briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).¹ We summarily affirm.

In January 2012, Tyler filed a notice of claim against State officials for depriving him of his money and property. The notice of claim asserted that the facts giving rise to the claim were revealed at a hearing on September 21, 2011. The notice of claim also stated that it was placed in the prison mailbox on January 18, 2012.

On December 20, 2013, Tyler filed a complaint in the circuit court against State officials for damages and injunctive relief. The complaint alleged that State officials withheld Tyler's money and property when Tyler was transferred from Sand Ridge to the Milwaukee Secure Detention Facility (MSDF) on a probation hold on June 2, 2011. The complaint also stated that the events that caused the injury were revealed at Tyler's September 21, 2011 revocation hearing, and that the notice of claim was filed on January 18, 2012.

Tyler's state action was removed to federal court because it included federal claims. The federal court dismissed Tyler's property claims on summary judgment, on grounds that Tyler had failed to file a timely notice of claim within 120 days of the event that gave rise to the property claims. *See* WIS. STAT. § 893.82(3). The court explained that, while Tyler stated that the events underlying his property claims were revealed at the September 21, 2011 hearing, the events giving rise to Tyler's property claims occurred more than 120 days prior to Tyler's January 18, 2012 notice of claim. On appeal, the Seventh Circuit rejected Tyler's due process claim on grounds that Tyler had an adequate remedy to pursue his claims in state court, "even if, as the

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

District Court decided, he failed to pursue that remedy properly.” *Tyler v. Wick*, 680 F. App’x 484, 485 (7th Cir. 2017).² The court also rejected Tyler’s argument “that the district court should have remanded to state court the question whether he complied with the notice-of-claim requirement,” explaining that “the district court had supplemental jurisdiction to address whether [Tyler] complied with the state law’s notice requirements.” *Id.*

On September 7, 2017, Tyler initiated this action by filing another complaint in the circuit court. Tyler again sought damages and injunctive relief based on state officials depriving him of his money and property upon his transfer from Sand Ridge to MSDF on June 2, 2011. Tyler argued that the State defendants violated his patient rights under WIS. STAT. § 51.61 while Tyler was a patient at Sand Ridge by withholding his money and property while Tyler was awaiting revocation proceedings at MSDF, after Tyler’s supervision was revoked, and after Tyler returned to Sand Ridge. Tyler alleged that he was transferred from Sand Ridge to MSDF on June 2, 2011, and that Tyler’s money and property were not transferred with him. He alleged that Sand Ridge informed him by letter dated August 1, 2011, that Sand Ridge’s policy and practice was to send patient money and property after the revocation hearing. He asserted that he had returned to Sand Ridge on February 28, 2012, and had not regained his property. The circuit court dismissed Tyler’s action on claim preclusion grounds, finding that the issues had already been litigated and dismissed in federal court by a final judgment on the merits.

² Tyler argues that this court should disregard the State’s citations to *Tyler v. Wick*, 680 F. App’x 484, 485 (7th Cir. 2017), because, Tyler asserts, the facts in that case are incorrect. Under WIS. STAT. RULE 809.23(3)(a), a party may cite unpublished opinions “to support a claim of claim preclusion, issue preclusion, or the law of the case.” While Tyler asserts that the facts in that case are incorrect, he does not explain which facts are erroneous or provide any citation to support that assertion.

Tyler contends that his notice of claim was timely filed on January 18, 2011, under the prison mailbox rule. *See State ex rel. Shimkus v. Sondalle*, 2000 WI App 238, ¶14, 239 Wis. 2d 327, 620 N.W.2d 409. He then contends that claim preclusion does not bar his action because, he asserts, his property claims were not fully litigated on the merits. He asserts that the federal court's decision dismissing his property claims should have been without prejudice because the federal court indicated that the facts were not sufficiently developed to reach the merits as to all of Tyler's claims and the State's defenses. He argues that the federal court dismissed his claims on its determination that Tyler had adequate state court remedies and points out that Tyler attempted to pursue his state court remedies by filing his action in state court and that it was the State that removed his action to federal court. He contends that, because his federal claims were dismissed, the federal court should have declined to exercise jurisdiction over his state law claims and should have dismissed them without prejudice. *See Redwood v. Dobson*, 476 F.3d 462, 467 (7th Cir. 2007) ("A court that resolves all federal claims before trial normally should dismiss supplemental claims without prejudice.").

We accept, for purposes of this opinion, that Tyler's notice of claim was filed on January 18, 2011, under the prison mailbox rule. We agree with the State, however, that Tyler's argument that his January 18, 2011 notice of claim was timely is barred by issue preclusion.³

³ We also agree with the State that we may affirm the circuit court's decision on this basis even though the circuit court relied on claim preclusion, not issue preclusion, to dismiss Tyler's claims. *See Doe v. General Motors Acceptance Corp.*, 2001 WI App 199, ¶7, 247 Wis. 2d 564, 635 N.W.2d 7 ("A respondent may advance on appeal, and we may consider, any basis for sustaining the trial court's order or judgment. That is, a respondent may argue, and we may conclude, that the trial court reached the right result, but for 'the wrong reason.'" (citations omitted)). Tyler asserts in his reply brief that it is unfair for the State to raise issue preclusion in its brief because Tyler did not have the opportunity to fully brief the issue. We disagree. Tyler had a full opportunity to brief the issue of whether issue preclusion applies in his reply brief, and did so.

“The doctrine of issue preclusion forecloses relitigation of an issue that was previously litigated between the same parties or their privies.” *Love v. Smith*, 2016 WI App 3, ¶25, 366 Wis. 2d 663, 875 N.W.2d 131. “Issue preclusion prevents ‘relitigation in a subsequent action of an issue of law or fact that has been actually litigated and decided in a prior action and reduced to judgment.’” *Id.* (quoted source omitted). We apply a two-step analysis to determine whether issue preclusion bars relitigation of an issue: (1) “whether the issue or fact was actually litigated and determined in the prior proceeding by a valid judgment ... and whether the determination was essential to the judgment”; and (2) “whether applying issue preclusion comports with principles of fundamental fairness.” *Id.*, ¶¶25-27 (quoted source omitted).

Tyler contends in his reply brief that issue preclusion does not apply.⁴ He argues that the issue of the timeliness of his notice of claim was not actually litigated in the federal court. In support, he cites the federal court’s statement that one of Tyler’s claims “could survive defendants’ notice-of-claim-argument depending on the dispute over when [Tyler] sent the notice, so [the court would] not dismiss it before further discovery [was] conducted.” However, the statement cited by Tyler was a reference to Tyler’s malicious prosecution claim against Tyler’s probation and parole agent, rather than a reference to Tyler’s property claims. As set

⁴ Tyler also asserts that the event giving rise to his property claims was the revocation hearing on September 21, 2011, because Sand Ridge had informed him that it was its policy to send patient money and property after revocation. Thus, Tyler asserts, the property deprivation occurred when Sand Ridge failed to return Tyler’s money and property upon his revocation. As set forth in this opinion, we conclude that issue preclusion applies to bar Tyler from relitigating this issue. We note, however, that Tyler’s complaint asserted that he was deprived of his property as of his transfer to MSDF on June 2, 2011.

Additionally, we agree with the State that Tyler’s separate property claims arising from events following Tyler’s January 18, 2011 notice of claim were properly dismissed because Tyler failed to file a notice of claim following those events.

forth above, the court found that Tyler's property claims arose from events prior to 120 days before Tyler's notice of claim.⁵

Tyler also argues that the federal court of appeals stated that Tyler still had meaningful state remedies available. However, as the federal court of appeals explained, the district court exercised its supplemental jurisdiction and determined that Tyler's state law property claims were procedurally barred based on Tyler's failure to file a timely notice of claim. *See Redwood*, 476 F.3d at 467 (federal court may exercise its supplemental jurisdiction to address state law claims even if all federal claims have been resolved before trial). Thus, the federal court of appeals identified the existence of state law remedies to explain why Tyler's due process claim failed; it did not decide that any of those state law remedies were still available to Tyler.

We conclude that the issue of the timeliness of Tyler's notice of claim as to his property claims was actually litigated and determined in the federal court by a valid judgment, and that the determination was essential to the judgment. The district court found that Tyler's January 18, 2011 notice of claim was not timely as to Tyler's property claims because the events giving rise to the property claims predated the 120-day period prior to the notice of claim, and the court dismissed Tyler's claims on that basis. The federal court of appeals acknowledged the

⁵ Tyler also cites the district court's statements in a subsequent order dismissing Tyler's malicious prosecution claim against his agent on immunity grounds rather than failure to file a timely notice of claim. Tyler points out that the court applied the mailbox rule and declined to dismiss the malicious prosecution claim based on failure to file a timely notice of claim. However, as explained, the court had already dismissed Tyler's property claims for failure to file a timely notice of claim, explaining that Tyler's property claims arose from events prior to the September 21, 2011 revocation hearing. Significantly, Tyler's malicious prosecution claim against his agent arose from the agent's statements at the September 21, 2011 revocation hearing. The court's statements as to the timeliness of Tyler's notice of claim as to Tyler's malicious prosecution claim are not relevant as to whether the issue of the timeliness of Tyler's notice of claim as to his property claims was actually litigated and decided by the court.

district court's determination that Tyler's notice of claim was not timely, and also determined that the district court had supplemental jurisdiction to reach that issue. Thus, the issue of the timeliness of Tyler's notice of claim as to Tyler's property claims against State officials was resolved against Tyler by the federal court. Accordingly, the first step of our issue preclusion analysis establishes that issue preclusion applies.

The second step of our analysis is whether applying issue preclusion comports with fundamental fairness. The factors we consider "includ[e] the opportunity to obtain review of the previous judgment, the quality and extensiveness of the previous proceedings, and public policy." *Love*, 366 Wis. 2d 663, ¶27. We perceive no fundamental unfairness in preventing Tyler from relitigating the issue that was already decided in the federal court. Nor do we perceive any public policy considerations preventing the application of the doctrine. Therefore, issue preclusion bars Tyler from relitigating this issue.⁶

We also agree with the State that Tyler's claim for injunctive relief, seeking the return of his property, is moot. See *Milwaukee Police Ass'n v. City of Milwaukee*, 92 Wis. 2d 175, 183, 285 N.W.2d 133 (1979) ("[A] case is moot when a determination is sought upon some matter which, when rendered, cannot have any practical legal effect upon a then existing controversy."). Tyler asserts in his brief-in-chief that he returned to Sand Ridge on February 28, 2012. Tyler states that Sand Ridge had by then sent Tyler's property to one of his family members. Tyler

⁶ In reply, Tyler contends that respondent Stephanie Lutz Wick failed to respond and therefore concedes Tyler's arguments on appeal. In a supplemental letter brief, the State notified this court that it was now representing Wick along with the other State respondents. The State then argued that the summons and complaint was never timely served on Wick, and that the circuit court therefore never had personal jurisdiction over her. Tyler filed a response supplemental letter brief arguing that it was too late for the State to argue lack of personal jurisdiction over Wick. Because we conclude that issue preclusion applies, and affirm on that basis, we do not consider the parties' personal jurisdiction arguments.

states that his family member then sent the property back to Tyler at Sand Ridge, but that Tyler was not allowed to keep most of the property, and that the property was then destroyed or donated. The State agrees that Sand Ridge has disposed of Tyler's property. Accordingly, there is no injunctive relief that can be ordered for Sand Ridge to return Tyler's property.⁷

Therefore,

IT IS ORDERED that the order is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals

⁷ In reply, Tyler argues that his claim for injunctive relief is not moot, contending that the record does not contain any evidence as to how or when Tyler's property was destroyed. However, it is undisputed that Sand Ridge no longer has any of Tyler's property in its possession. The details as to the disposal of the property do not alter our mootness analysis.