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DISTRICT IV

February 24, 2022

To:

Hon. Josann M. Reynolds
Circuit Court Judge
Electronic Notice

Brian Keenan
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Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Jimmy Powell 371802
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P.O. Box 25
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You are hereby notified that the Court has entered the following opinion and order:

2020AP973

Jimmy Powell v. Cindy O'Donnell (L.C. # 2018CV1792)

Before Blanchard, P.J., Kloppenburg, and Nashold, 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).

Jimmy Powell appeals a circuit court order dismissing his petition for a writ of certiorari due to claim and issue preclusion. 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 (2019-20).¹ For the reasons that follow, we affirm.

Powell was sentenced to prison pursuant to a 2010 judgment of conviction that provided: "All outstanding financial obligations shall be paid at the rate of 25% of the prison wages and

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

work release funds. The balance remaining at release from prison [to] be paid as a condition of extended supervision or parole at a rate determined by the supervising agent.” Thereafter, the sentencing court entered an order setting the amount of restitution. The restitution order provided that “[t]he remaining balance owed shall be paid as determined by the Wisconsin Department of Corrections.” The Department of Corrections (DOC) initially collected court obligations, including restitution, by deducting twenty-five percent of Powell’s inmate funds.

While Powell was serving his sentence, DOC changed its policy and increased the rate of restitution deductions from Powell’s inmate funds from twenty-five to fifty percent. Powell filed an inmate complaint asserting that the fifty-percent deduction rate violated the terms of his judgment of conviction, which permitted deduction “at the rate of 25 percent.” DOC issued a decision dismissing the complaint and Powell sought judicial review of the administrative decision in the circuit court. On certiorari, by order of October 11, 2017, the circuit court affirmed DOC’s decision on the merits. Powell did not appeal.

In April 2018, Powell filed with the original sentencing court a “Motion to Correct Clerical Error on Restitution Order,” asking that it “clarify” that the judgment of conviction prohibited DOC from collecting restitution at a rate greater than twenty-five percent. The court denied the motion “because there [was] no need for clarification.”

Thereafter, Powell filed another inmate complaint again challenging DOC’s fifty-percent withholding rate as contrary to the terms of his judgment of conviction. DOC ultimately dismissed the matter, in part because Powell had already lost a certiorari action challenging its withholding rate. As before, Powell filed a writ of certiorari challenging DOC’s dismissal. The circuit court affirmed on grounds of claim and issue preclusion. Powell appeals.

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) (alteration in original) (quoted source omitted). There are three elements that must be present 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.

We conclude that all three factors exist to preclude Powell’s latest challenge to the fifty-percent deduction rate.² *See id.* (whether claim preclusion applies to a particular fact scenario is a question of law that we review independently). Powell cannot reasonably dispute that the prior and the present certiorari suits contain the same parties and that the prior certiorari action ended in a judgment on the merits. Further, we conclude that both suits are based on an identical cause of action, namely, DOC’s withholding of Powell’s inmate funds at the rate of fifty percent. *Id.* at 554 (the second factor exists “if both suits arise from the same transaction, incident or factual situation” (quoted source omitted)).

Citing *Kruckenberg v. Harvey*, 2005 WI 43, ¶39, 279 Wis. 2d 520, 694 N.W.2d 879, Powell argues that an exception to claim preclusion should apply due to “the failure of the prior litigation to yield a coherent disposition of the controversy.” We are not persuaded. As DOC’s

² DOC also argues that Powell’s claims should be dismissed on the merits. Because the action was properly dismissed as barred by claim preclusion, we need not address either issue preclusion or the underlying merits as alternative grounds to affirm. *See State v. Heyer*, 174 Wis. 2d 164, 170, 496 N.W.2d 779 (Ct. App. 1993) (an appellate court should dispose of an appeal on the narrowest possible ground).

appellate brief points out, *Kruckenberg* adopted a narrow exception to claim preclusion in real property disputes where “an action between parties or their privies does not explicitly determine the location of a boundary line.” *Id.*, ¶41. To the extent a broader “coherent disposition” exception might exist, Powell offers no good reason why it should apply here, where his prior opportunity to convince the circuit court of his arguments was unsuccessful and he chose not to appeal.

Nor does Powell’s intervening motion for correction/clarification to the sentencing court change the claim preclusion analysis. Here, Powell asserts that certain language in the sentencing court’s order denying his correction/clarification motion directed DOC to collect restitution at the rate of twenty-five percent, thus voiding the previous circuit court order dismissing Powell’s prior certiorari petition.

We disagree. As noted by the certiorari court in the present action, the sentencing court specifically denied Powell’s correction/clarification motion and therefore, “nothing has changed regarding Mr. Powell’s claims since the [prior certiorari] order.” Powell offers no good reason for why the order denying the motion for correction/clarification by the criminal sentencing court could somehow render the prior decision by the certiorari court an incoherent disposition or otherwise ineligible for claim preclusion. The denied correction/clarification motion did nothing to eliminate any of the three claim preclusion requirements.

To the extent Powell suggests that the sentencing court’s denial order created tension with the prior certiorari decision, this does not affect the claim preclusion analysis. As DOC points out, regarding Powell’s reliance on the sentencing court’s denial order, WIS. STAT. § 806.07 sets forth the remedy for a party seeking to void a prior order or judgment.

In sum, because Powell already lost a materially identical certiorari petition, the circuit court here properly dismissed this second petition on claim preclusion grounds.

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to 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