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DISTRICT I

April 23, 2013

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

2012AP1075 Larry Scruggs, Jr. v. Waterstone Bank, SSB pka Wauwatosa Savings Bank and ProBuColls Association, etal. (LC # 2011CV016827)

Before Curley, P.J., Fine and Kessler, JJ.

Larry Scruggs, Jr. appeals, *pro se*, from an order granting Waterstone Bank's, SSB pka Wauwatosa Savings Bank's and ProBuColls Association's (collectively Waterstone) motion to dismiss. Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition and affirm. *See* WIS. STAT. RULE 809.21(1) (2011-12).[1]

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

Background

This is one of three appeals filed by Scruggs stemming from cases he describes as "shar[ing] a common basis in events, facts and other circumstances." As we previously stated, the procedural history is cumbersome. *See* ***Wauwatosa Savings Bank v. Scruggs***, Nos. 2010AP1271, 2010AP1858, unpublished slip op. ¶2 (WI App Sept. 27, 2011). For context, we draw upon some of the facts as set forth in our prior opinion:

> Wauwatosa Savings Bank, n/k/a Waterstone Bank, SSB, commenced a foreclosure action against Advanced Properties & Investments, LLC, Scruggs, Reliable Water Services, LLC, and A.J. Graf Plumbing on June 22, 2007. Advanced Properties and Scruggs, who is the sole shareholder of Advanced, did not file responsive pleadings. On September 24, 2007, the circuit court entered a judgment of foreclosure by default against Advanced Properties and Scruggs. On March 4, 2009, the bank moved to dismiss Scruggs from the action because he was not a titleholder on the foreclosed property, and thus was not a necessary party. The circuit court granted the motion. On March 9, 2009, an order was entered confirming the sheriff's sale.
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> ….
>
> … Waterstone … [then] filed an action against Advanced Properties and Reliable Water Services on September 3, 2009, seeking an order reforming the legal description in the refinance mortgage and in the sheriff's deed to include all of the West Allis property in dispute, including the parking lot which had been inadvertently omitted from the refinanced mortgage due to a mistake. On November 11, 2009, the bank moved for default judgment. On November 13, 2009, Scruggs moved to intervene. He also sought an order dismissing Advanced Properties on the grounds that he was the sole owner of the disputed parcel. On [November 18, 2009], the circuit court ordered default judgment in favor of the bank.[2] The circuit court held a hearing on Scruggs' motion to intervene on March 15, 2010, and denied the motion on

[2] The judgment further served to reform the legal descriptions in the mortgage and in the sheriff's deed to add the parking lot.

> June 15, 2010. Scruggs then filed a notice of appeal from that order.

Wauwatosa Savings Bank, Nos. 2010AP1271, 2010AP1858, unpublished slip op. ¶¶2, 6. Because Scruggs did not show that he had a personal ownership interest in the property, "despite the fact that he had repeated opportunities" to present such evidence, we concluded on appeal that the circuit court had properly denied his motion to intervene. ***Id.***, ¶8.

Less than two months after we issued our decision, Scruggs filed the complaint in the instant case and attached a deed, designating Advanced Properties as the grantor and Scruggs as the grantee, for the parking lot. In filing the action, Scruggs sought, among other things, a declaration that the parking lot was never legally owned or controlled by Waterstone; an order that Waterstone does not have any title interest in the parking lot; and an order reforming the deed to the parking lot to clearly establish that Scruggs was and is the rightful owner of the parking lot and voiding the prior reformation.

In response, Waterstone filed a motion to dismiss. The circuit court granted the motion after concluding that Scruggs' claims were barred by the doctrines of issue preclusion and claim preclusion.[3]

Discussion

The doctrine of claim preclusion bars parties from relitigating any claim that arises out of the same relevant facts, transactions, or occurrences that were the subject of a prior action when:

[3] We note that the circuit court determined that the motion to dismiss should be treated as a motion for summary judgment because matters not contained in Scruggs' complaint were submitted. *See* WIS. STAT. § 802.06(2)(b). Notwithstanding, it issued an order granting Waterstone's "motion to dismiss."

(1) there is identity between the parties or their privies in the prior and present suits; (2) the prior litigation resulted in a final judgment on the merits by a court with jurisdiction; and (3) there is identity of the causes of action in the two suits. ***Kruckenberg v. Harvey***, 2005 WI 43, ¶¶19, 21, 279 Wis. 2d 520, 694 N.W.2d 879. "In effect, the doctrine of claim preclusion determines whether matters undecided in a prior lawsuit fall within the bounds of that prior judgment." ***Id.***, ¶22. We are satisfied that all three elements have been met here.[4]

First, Scruggs and Waterstone were the two parties involved in the determination of Scruggs' motion to intervene. Thus, there is identity between the parties.

Second, Waterstone obtained a judgment reforming the legal descriptions in the mortgage and in the sheriff's deed to add the parking lot. The circuit court then issued an order denying Scruggs' motion to intervene. In doing so, as Waterstone points out, the circuit court effectively allowed the judgment of reformation to stand. Waterstone further stresses that during the prior proceedings, Scruggs was given numerous opportunities to introduce evidence showing his ownership interest in the parking lot—a fact that we noted in our prior decision. *See* ***Wauwatosa Savings Bank***, Nos. 2010AP1271, 2010AP1858, unpublished slip op. ¶8. Consequently, we agree with Waterstone that the merits of Scruggs' ownership claim were fully litigated in the prior case.

Third, Scruggs' present claims arise from the same transactions and the same underlying facts that were at issue when Waterstone obtained the judgment reforming the legal descriptions

[4] This court notes that in his reply brief, Scruggs challenges only the second element of the doctrine of claim preclusion.

to add the parking lot and when Scruggs previously sought to intervene. *See* ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 553, 525 N.W.2d 723 (1995) (Wisconsin applies a transactional approach when determining whether two suits involve the same cause of action.). "'[I]f both suits arise from the same transaction, incident or factual situation, [claim preclusion] generally will bar the second suit.'" ***Id.*** at 554 (citation and one set of quotation marks omitted; brackets in ***Bugher***). Such is the case here.

Because we conclude that all of the elements of claim preclusion have been met, we affirm the circuit court and we decline Scruggs' request that we recognize a special exception to the doctrine. Claim preclusion "is essential to *judicial operation*, to the orderly working of the judicial branch. If disputants could just reopen their adjudicated disputes, there would be no end to litigation, nor any beginning of authority." ***Kruckenberg***, 279 Wis. 2d 520, ¶20 n.14 (citation and one set of quotation marks omitted).[5]

Upon the foregoing reasons,

IT IS ORDERED that the circuit court's order is summarily affirmed. *See* WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals

[5] Because claim preclusion is a sufficient basis on which to affirm, we do not discuss the circuit court's additional reliance on issue preclusion. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).