Circuit Court for Anne Arundel County
Case No. C-02-CV-18-002696

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2861

September Term, 2018

MARGUERITE R. MORRIS

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Gould

JJ.

PER CURIAM

Filed: April 9, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Marguerite R. Morris, appellant, appeals from an order issued by the Circuit Court for Anne Arundel County dismissing her complaint for writ of mandamus. She raises eight issues on appeal, which reduce to one: whether the court erred in dismissing her complaint. Because Ms. Morris's complaint was barred by the doctrine of res judicata, we shall affirm the judgment of the circuit court.

BACKGROUND

Ms. Morris is the personal representative of the Estate of Katherine Sarah Morris. Katherine Morris, Ms. Morris's daughter, died in 2012. The Office of the Chief Medical Examiner (OCME) determined that the cause of death was carbon monoxide poisoning and that the manner of death was suicide. Ms. Morris, however, believes that her daughter was the victim of a homicide and that law enforcement officers and the OCME conducted an inadequate investigation into her death. In March 2018, Ms. Morris filed a "Complaint for Writ of Mandamus" on behalf of herself and the Estate, naming Dr. David Fowler, in his official capacity as the Chief Medical Examiner for the State of Maryland, as the sole defendant (first complaint). As relief, Ms. Morris sought a writ of mandamus compelling Dr. Fowler to change Katherine Morris's manner of death from suicide to undetermined and damages in an amount less than $75,000. Dr. Fowler filed a motion to dismiss the first complaint with prejudice, claiming that Ms. Morris could not file a writ of mandamus because she had an available statutory remedy to seek her requested relief, that Ms. Morris had failed to exhaust that remedy, and that her claim was also barred by the statute of limitations and/or laches. He further asserted that any tort claim against him should be dismissed because he had not waived his sovereign

immunity.[1] On June 6, 2018, the court granted the motion to dismiss and dismissed the first complaint with prejudice. Ms. Morris filed a motion to alter or amend the judgment, which was denied. She did not file a notice of appeal.

On September 11, 2018, Ms. Morris filed a second "Complaint for Writ of Mandamus" (second complaint). The second complaint again sought a writ of mandamus compelling Dr. Fowler to change Katherine Morris's manner of death from suicide to undetermined, but it did not request an award of damages. The State of Maryland, appellee, was the sole named defendant. The State filed a motion to dismiss, claiming that the complaint was barred by the doctrine of res judicata and that even if it were not, that it should be dismissed for the reasons previously stated in Dr. Fowler's motion to dismiss the first complaint. The court granted the motion to dismiss with prejudice, without stating a reason for the dismissal. This appeal followed.

DISCUSSION

Ms. Morris contends that the court erred in dismissing the second complaint as being barred by res judicata. We disagree.[2] Res judicata is "an affirmative defense [that] bar[s] the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been

[1] He alternatively asked the court to dismiss the case without prejudice for failure to serve the complaint on the proper party and because Ms. Morris had failed to pay the filing fee.

[2] Because we affirm on res judicata grounds, we do not address the State's alternative contention that the complaint failed to state a claim upon which relief could be granted.

- but was not - raised in the first suit." *See Anne Arundel County Bd. of Educ. v. Norville*, 390 Md. 93, 106 (2005) (internal quotation marks and citation omitted). By preventing parties from relitigating matters that "have been or *could have been* decided fully and fairly," the doctrine of *res judicata* "'avoids the expense and vexation attending multiple lawsuits, conserves the judicial resources, and fosters reliance on judicial action by minimizing the possibilities of inconsistent decisions.'" *Id*. at 107 (quoting *Murray Int'l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)) (emphasis in original). Under Maryland law, the elements of res judicata, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and (3) that there has been a final judgment on the merits. *See Colandrea v. Wilde Lake Comm. Ass'n.,* 361 Md. 371, 392 (2000).

All three elements of *res judicata* were met in this case. First, both lawsuits had the same plaintiffs. Moreover, Dr. Fowler, in his official capacity as the Chief Medical Examiner for the OCME, and the State of Maryland are the same defendants for the purposes of res judicata. *See Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) ("[A] suit against the official's office" is "no different from a suit against the State itself."). Ms. Morris nevertheless asserts that the defendants were "not of equal status" because Dr. Fowler was immune from suit, whereas the State of Maryland was not. This argument appears to be based on the fact that Dr. Fowler moved to dismiss Ms. Morris's claim for monetary damages on sovereign immunity grounds because she had failed to comply with the Maryland Tort Claims Act. However, the State of Maryland would have

been equally immune to such a tort action if the conditions precedent to the waiver of sovereign immunity had not been met. Thus, adding the State of Maryland as a defendant in the first lawsuit would not have altered the court's sovereign immunity analysis. Instead, as the State notes "this would have been a distinction without a difference."

In any event, Dr. Fowler only raised the immunity defense with respect to Ms. Morris's claim for monetary damages. But Ms. Morris did not raise a claim for monetary damages in the second lawsuit. Therefore, even if we assume that Dr. Fowler and the State of Maryland were "not of equal status" with respect to Ms. Morris's tort claim, it would not change the fact they were the same parties for the purposes of her request for mandamus relief.

As to the second element or res judicata, Ms. Morris clearly raised the same claim in the second complaint that she raised in the first complaint, specifically that the court should issue a writ of mandamus requiring the OCME to amend her daughter's autopsy report to change the manner of death from suicide to undetermined. In her brief, Ms. Morris asserts that this element was not met because the second action "raised new facts." However, she does not indicate what those new facts were or why they could not have been raised in the first action. Because this claim is not argued with particularity, it is not properly before us.

In any event, we have reviewed the record and, although her second complaint sets forth additional reasons why she believes the autopsy report should have been amended, it does not identify any new facts that were discovered after the dismissal of her first

complaint and that might have reasonably led the court to reach a different result when ruling on the motion to dismiss in that case. Because "the application of the rule of res judicata does not depend upon whether or not the case was as comprehensively or persuasively presented [in] the first [case] as [in] the second," *see Whittle v. Board of Zoning Appeals of Baltimore County*, 211 Md. 36, 49 (1956), the second element of res judicata was also satisfied.

Finally, because the first complaint was dismissed with prejudice, there was a final judgment on the merits for res judicata purposes. *See Claibourne v. Willis*, 347 Md. 684, 692 (1997) ("The dismissal with prejudice . . . has the same *res judicata* effect as a final adjudication on the merits favorable to the defendant."); *Parks v. State*, 41 Md. App. 381, 386 (1979) ("A dismissal 'with prejudice' has been held to be as conclusive of the rights of the parties as if the action had been prosecuted to a final adjudication on the merits adverse to the complainant."). Ms. Morris appears to contend that the dismissal of her complaint was based on her failure to join the State of Maryland as a defendant and therefore, that it was not a judgment on the merits. However, the record indicates that the trial court did not dismiss her petition for writ of mandamus because she failed to sue the proper party. Rather, the court dismissed that claim for failure to state a cause of action upon which relief can be granted because it found that Ms. Morris had an adequate legal remedy to amend the manner of death on her daughter's autopsy report.[3] And the

[3] Ms. Morris contends that she did not have an adequate legal remedy because, after she appealed the OCME's denial of her request to amend the autopsy report to the Secretary of Health, the Secretary failed to refer her case to the Office of Administrative (continued)

"dismissal of an action, for failure to state a cause of action has been held to be a judgment on the merits." *Annapolis Urban Renewal Authority v. Interlink, Inc.*, 43 Md. App. 286, 293 (1979). Because all three elements of res judicata were met in this case the court did not err in dismissing the second complaint.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

(continued)
Hearings, as required by Section 5-310(d)(2) of the Health General Article. We express no opinion on the merits of that claim. However, we note that this opinion is without prejudice to Ms. Morris filing a petition for writ of mandamus to compel the Secretary to refer her appeal to the OAH if she believes that he has unreasonably or unlawfully failed to do so.