STATE OF MICHIGAN

COURT OF APPEALS

MARJORIE KELSEY,

Plaintiff-Appellant,

v

HOME STAR TRADING COMPANY LLC, LAKES MANAGEMENT COMPANY LLC, and THOR REAL ESTATE COMPANY LLC,

Defendants-Appellees.

UNPUBLISHED
June 20, 2019

No. 345057
Wayne Circuit Court
LC No. 18-004553-CK

Before: GADOLA, P.J., and BOONSTRA and SWARTZLE, JJ.

PER CURIAM.

Plaintiff signed a land contract that would be treated as a lease if she defaulted. Plaintiff defaulted and, in an eviction proceeding, she entered a consent judgment regarding the dollar amount that remained owing. Plaintiff then filed two subsequent lawsuits, including this action. We affirm the trial court's order granting defendants summary disposition in this third lawsuit on grounds of res judicata.

I. BACKGROUND

This case arises from a land contract and quitclaim deed that plaintiff signed with Thor Real Estate Company, LLC (Thor Real Estate) on October 22, 2010. The land contract stated that Thor Real Estate sold real property to plaintiff. Under the land contract, plaintiff was responsible for making monthly payments to Lakes Management Company, LLC (Lakes Management). The land contract further stated that if plaintiff failed to make a monthly payment, Thor Real Estate could execute the quitclaim deed, thereby terminating plaintiff's rights to the real property under the land contract. If that occurred, plaintiff would be deemed a tenant and would continue to make monthly payments to Lakes Management if she continued to occupy the real property. Plaintiff failed to make a payment and Thor Real Estate executed the quitclaim deed. Thor Real Estate then executed a quitclaim deed transferring the property to Home Star Trading Company, LLC (Home Star).

On December 18, 2013, Home Star initiated an eviction proceeding against plaintiff in the district court (the "first lawsuit"). In that action, plaintiff and Home Star entered a consent judgment under which plaintiff agreed to pay $4,033 in unpaid rent. Plaintiff did not appeal the consent judgment and eventually surrendered the real property after failing to make the payment.

On February 20, 2015, plaintiff filed an action in small-claims court against Home Star and Lakes Management, seeking to recover payments she made on interest, taxes, and water bills for the real property (the "second lawsuit"). The defendants removed the case to the general-civil division of the district court. The district court ultimately granted summary disposition to the defendants on the grounds that the court lacked subject-matter jurisdiction over plaintiff's claims. Plaintiff did not appeal the district court's grant of summary disposition to the defendants.

Subsequently, plaintiff filed this lawsuit against defendants and alleged fraud, forgery, fraud on the court, and fraudulent inducement of the land contract (the "third lawsuit"). Defendants filed a motion for summary disposition, arguing that plaintiff's claims were barred by the doctrine of res judicata. Defendants asserted that plaintiff could have brought her fraud claims in the first lawsuit. Plaintiff argued that she was not aware of her potential fraud claims until 2015, and that she could not have brought those claims earlier. The trial court held that plaintiff's claims were barred by the doctrine of res judicata because plaintiff could have raised the claims in one of the earlier lawsuits. The trial court also held that plaintiff's claims were barred because the six-year period under the statute of limitations for contract claims had expired. Plaintiff now appeals.

II. ANALYSIS

A. STANDARD OF REVIEW

Defendants moved for summary disposition under MCR 2.116(C)(6) and (7). Although the trial court did not indicate whether it granted defendants' motion under MCR 2.116(C)(6) or (7), it expressly granted summary disposition based on its conclusion that the doctrine of res judicata barred plaintiff's claims. MCR 2.116(C)(6) is not the appropriate rule under which to grant summary disposition based on res judicata because that rule "does not operate where another suit between the same parties involving the same claims is no longer pending at the time the motion is decided." *Fast Air, Inc v Knight*, 235 Mich App 541, 545; 599 NW2d 489 (1999). Instead, MCR 2.116(C)(7) is the appropriate rule under which a trial court grants summary disposition based on res judicata. See *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 416-417; 733 NW2d 755 (2007). Because the trial court expressly based its ruling on the doctrine of res judicata, we review that ruling as having been granted under MCR 2.116(C)(7).

This Court reviews de novo a trial court's grant or denial of summary disposition. *Detroit Edison Co v Stenman*, 311 Mich App 367, 377; 875 NW2d 767 (2015). MCR 2.116(C)(7) permits summary disposition "because of release, payment, prior judgment, [or] immunity granted by law." *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015), quoting MCR 2.116(C)(7). "When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the

nonmoving party." *McLain v Lansing Fire Dep't*, 309 Mich App 335, 340; 869 NW2d 645 (2015). Whether the doctrine of res judicata applies to bar an action is a question of law that this Court reviews de novo. *Duncan v Michigan*, 300 Mich App 176, 194; 832 NW2d 761 (2013).

B. RES JUDICATA

Plaintiff argues that the trial court erred when it granted summary disposition on grounds of res judicata because plaintiff's claims were not ripe at the time of the first lawsuit and because the trial court did not decide the first lawsuit on the merits. We conclude that the trial court properly granted summary disposition to defendants on grounds of res judicata.

"The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action." *Adair v Michigan*, 470 Mich 105, 121; 680 NW2d 386 (2004). "A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies." *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001) (cleaned up). "This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 121.

For the doctrine of res judicata to apply, the earlier lawsuit must have been decided on the merits. Plaintiff argues that the doctrine of res judicata does not bar this third lawsuit because the second lawsuit was not decided on the merits. Plaintiff points out that the district court granted summary disposition in the second lawsuit based on a lack of subject-matter jurisdiction. "Unless the court otherwise specifies in its order for dismissal, a dismissal under this subrule or a dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction or for failure to join a party under MCR 2.205, operates as an adjudication on the merits." MCR 2.504(B)(3). Plaintiff's argument overlooks the fact that, although the district court entered a dismissal of the second lawsuit for lack of subject-matter jurisdiction, that lawsuit was the *second* suit involving the land contract. The first lawsuit was filed by Home Star to evict plaintiff for failure to pay rent, as specified in the land contract. In that first lawsuit, plaintiff and Home Star entered into a consent judgment. Consent judgments are determinations on the merits. *Ditmore v Michalik*, 244 Mich App 569, 576; 625 NW2d 462 (2001). Accordingly, the first lawsuit between the parties, involving the eviction for failure to pay as required by the terms of the land contract, was decided on the merits. The entry of the consent judgment satisfies the first element required for the application of res judicata because the first lawsuit was decided on the merits. See *Sewell*, 463 Mich at 575.

Regarding the second element required for the application of res judicata—that the matter contested in the second lawsuit was or could have been resolved in the first lawsuit—plaintiff argues that the fraud claims could not have been resolved in the first lawsuit because the issues were not ripe in 2013. "A claim lacks ripeness, and there is no justiciable controversy, where the harm asserted has not matured sufficiently to warrant judicial intervention." *Mich Chiropractic Council v Comm'r of the Office of Fin & Ins Servs*, 475 Mich 363, 381; 716 NW2d 561 (2006) (cleaned up), overruled on other grounds by *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 371 n 18; 792 NW2d 686 (2010).

To determine whether an issue could have been resolved in an earlier lawsuit, this Court has accepted the transactional test. *Adair*, 470 Mich at 123-124. "The transactional test provides that the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Id*. at 124 (cleaned up). "Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation,* [and] whether they form a convenient trial unit." *Id*. at 125, quoting 46 Am Jur 2d, Judgments, § 533, p 801 (quotation marks omitted).

In the first lawsuit, Home Star brought a summary proceeding to evict plaintiff from her residence. The eviction was premised on the land contract and accompanying quitclaim deed that plaintiff signed. Under the land contract, plaintiff agreed to make monthly payments for the real property. If plaintiff failed to make a payment, Thor Real Estate could terminate the land contract, execute the quitclaim deed, and recover ownership of the property, rendering plaintiff a tenant. That is precisely what happened. Plaintiff then failed to make another payment, which led to Home Star filing the summary proceeding to evict plaintiff. In this third lawsuit, plaintiff argued that defendants submitted a fraudulent land contract to the trial court because defendants forged her signature on the land contract submitted to the trial court. Plaintiff also claimed that defendants fraudulently induced her into signing the land contract, when that document was actually a lease.

It is clear that plaintiff's claims could have been resolved in the first lawsuit. Both the first lawsuit and this third lawsuit originated from the land contract that plaintiff signed with Thor Real Estate. Although the claims in the two lawsuits are distinct, all of the claims arise from the validity of the land contract. When Home Star was trying to enforce the provisions of the land contract, it would have been convenient for plaintiff to have argued that the land contract was void for fraud. Plaintiff, however, failed to advance such an argument. We conclude that plaintiff's issues in this third lawsuit could have been resolved in the first lawsuit.

Plaintiff asserts, however, that her fraud claims were not ripe until the second lawsuit, when the trial court informed plaintiff that she may have an actionable fraud claim against defendants. Plaintiff's argument conflates when she became aware of her claims and when her claims could have been brought. Although plaintiff may not have been aware of her potential fraud claims stemming from the land contract until the trial court told her about those potential claims, the alleged harm from these claims had already matured before the filing of the first lawsuit. Claims of fraud accrue when the wrong is done, *Boyle v Gen Motors Corp*, 468 Mich 226, 231; 661 NW2d 557 (2003), which, in this instance, was when the parties executed the land contract. Therefore, the second element required for the application of res judicata is satisfied.

Regarding the third element required for the application of res judicata, both lawsuits must have involved the same parties or privies. Plaintiff and Home Star were parties in both prior lawsuits, while Thor Real Estate and Lakes Management were not parties in the first lawsuit. Yet, we conclude that Home Star, Lakes Management, and Thor Real Estate were privies. "To be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Adair*, 470 Mich at 122. "The outer limit of the doctrine traditionally requires both a substantial identity of interests and a working functional relationship in which the interests of the nonparty are presented and protected

by the party in the litigation." *Id*. (cleaned up). Thor Real Estate executed the land contract with plaintiff. The land contract required plaintiff to make monthly payments to Lakes Management. As contemplated by the land contract, Thor Real Estate executed a quitclaim deed for the property to Home Star upon plaintiff's failure to pay as required. Given these facts, we conclude that Thor Real Estate and Lakes Management had a substantial identity of interests and a working functional relationship with Home Star, such that all three are privies.

Plaintiff argues, however, that defendants waived the defense of res judicata by failing to raise the defense in their trial-court motion for summary disposition. "A party against whom a cause of action has been asserted by complaint . . . must assert in a responsive pleading the defenses the party has against the claim. A defense not asserted in the responsive pleading or by motion as provided by these rules is waived." MCR 2.111(F)(2). Defendants filed a motion for summary disposition in lieu of an answer, and asserted that plaintiff's claims were barred because of res judicata. Because defendants explicitly asserted the defense of res judicata, plaintiff's argument that defendants waived the defense of res judicata fails.

Plaintiff further argues that the doctrine of res judicata does not apply because the earlier judgment was void, as the district court dismissed the case because it lacked subject-matter jurisdiction. "[A] proven lack of subject-matter jurisdiction renders a judgment void." *Usitalo v Landon*, 299 Mich App 222, 228; 829 NW2d 359 (2012). As stated above, however, the eviction proceeding was the first lawsuit for purposes of analyzing the doctrine of res judicata. The lawsuit to which plaintiff refers is the second lawsuit, which the district court dismissed for lack of subject-matter jurisdiction. Plaintiff raises no argument that judgment in the first lawsuit was void for lack of subject-matter jurisdiction, and our review confirms that it was not void.

Thus, we conclude that all the elements of res judicata were present, and the trial court properly granted defendants' motion for summary disposition based on the doctrine of res judicata. Because we conclude that the trial court properly granted defendants' motion for summary disposition based on this ground, we need not address defendants' argument regarding the statute of limitations.

C. FRAUD ON THE COURT

Finally, plaintiff purports to argue that "defendant" (without identifying which one) committed fraud on the trial court. In support, plaintiff simply strings together quotations and paraphrased statements by other courts discussing fraud on the court. Nowhere does plaintiff make a cogent argument tying the general standards to the facts of this case. Although plaintiff is acting pro per, she must still present an argument supported in law and in fact if she expects this Court to review it. Parties representing themselves are held to the same standard of presentation as members of the Michigan bar. *Totman v Royal Oak Sch Dist*, 135 Mich App 121, 126; 352 NW2d 364 (1984). In this case, plaintiff did not present a cogent argument that any of the defendants committed fraud on the trial court.

Affirmed.

/s/ Michael F. Gadola
/s/ Mark T. Boonstra
/s/ Brock A. Swartzle