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IN THE COURT OF APPEALS OF NORTH CAROLINA

COA No. 19-88

Filed: 4 June 2019

Wake County, No. 18 CVS 6382

SIDNEY B. HARR, Plaintiff,

v.

WRAL-5 NEWS, JAMES F. GOODMON, Defendants.

Appeal by plaintiff from order entered 25 September 2018 by Judge Rebecca Holt in Wake County Superior Court. Heard in the Court of Appeals 21 May 2019.

Sidney B. Harr, pro se, for plaintiff

Stevens Martin Vaughn & Tadych, PLLC, by C. Amanda Martin, for defendants

PER CURIAM.

Sidney B. Harr (“plaintiff”) appeals from order granting summary judgment to defendants. For the following reasons, we affirm.

I. Background

On 19 January 2017, plaintiff filed a libel lawsuit against defendants in Wake County Superior Court, case no. 17 CVS 739, which complained about defendant’s 4 July 2016 publication and broadcast. On 17 July 2017, the Honorable G. Bryan

Collins, Jr. dismissed the lawsuit for failure to state a claim upon which relief could be granted. This Court dismissed plaintiff's appeal on 25 October 2017.

On 25 May 2018 plaintiff, by his own admission, filed "essentially the same lawsuit against the same defendants," again with Wake County Superior Court. In his complaint, plaintiff admitted to initiating a libel lawsuit in Superior Court previously, and, during discovery, plaintiff further acknowledged that his 2017 lawsuit, "was essentially the same as [his] current lawsuit against defendant." On 25 September 2018, the Honorable Rebecca Holt granted summary judgment in favor of defendants on the principle of *res judicata* and because the lawsuit was barred by the statute of limitations. Plaintiff gave notice of appeal on 19 October 2018.

II. Discussion

"It is well settled that [a] dismissal under [North Carolina Rule of Civil Procedure] Rule 12(b)(6) operates as an adjudication on the merits unless the court specifies that the dismissal is without prejudice." *Fox v. Johnson*, 243 N.C. App. 274, 285, 777 S.E.2d 314, 324 (2015) (internal citations and quotation marks omitted) "Under the doctrine of *res judicata* or 'claim preclusion,' a final judgment on the merits in one action precludes a second suit based on the same cause of action between the same parties or their privies." *Smith v. Polsky*, __ N.C. App __, __, 796 S.E.2d 354, 359 (2017) (citation omitted). "[W]hether the doctrine of *res judicata* operates to bar a cause of action is a question of law reviewed *de novo* on appeal."

Housecalls Home Health Care, Inc. v. State, Dep't of Health & Human Servs., 225 N.C. App. 306, 313, 738 S.E.2d 753, 758 (2013) (citation omitted).

Plaintiff's previous lawsuit was dismissed with prejudice on 17 July 2017, and his appeal from that order was dismissed. Defendant has admitted that this suit is based on the same cause of action and is between the same defendants. Therefore, defendant is precluded from bringing this second suit under the doctrine of *res judicata*.

III. Conclusion

Because plaintiff's claim is bared by *res judicata*, we affirm the trial court's order.

AFFIRMED.

Panel consisting of Chief Judge MCGEE, and Judges ARROWOOD and HAMPSON.

Report per Rule 30(e).