Circuit Court for Prince George's County
Case No. CAL 19-39740

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 426

September Term, 2020

NIGEL WILLIAMSON

v.

VELINDA PARKER

Graeff,
Arthur,
Wells,
JJ.

Opinion by Graeff, J.

Filed: July 15, 2021

In 2018, Nigel Williamson, appellant, and Velinda Parker, appellee, entered into an agreement to jointly operate an SAT preparatory and tutoring business. Ms. Parker established a separate LLC to collect payments from parents and students.

In January 2019, Mr. Williamson filed a replevin action in the District Court of Maryland, requesting the return of documents and alleging that Ms. Parker had collected payments from clients without paying the business's expenses. The District Court subsequently dismissed that action with prejudice.

In December 2019, Mr. Williamson filed a complaint against Ms. Parker in the Circuit Court for Prince George's County, alleging breach of contract, fraud, and conversion. The circuit court granted Ms. Parker's motion to dismiss based on res judicata and collateral estoppel.

On appeal, Mr. Williamson presents two questions for this Court's review, which we have combined and rephrased slightly, as follows:

> Did the circuit court err in dismissing appellant's complaint on the ground that the action was barred by res judicata and collateral estoppel?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

I.

Factual History[1]

On December 12, 2019, Mr. Williamson filed a complaint against Ms. Parker in the Circuit Court for Prince George's County, alleging the following facts:

> 6. Williamson operated a SAT preparation and tutoring business known as Aceplan Prep ("Aceplan").
>
> 7. In or around September 2017, Williamson called Parker, a former client of his, to assist him in running Aceplan.
>
> 8. Williamson and Parker entered an agreement covering the terms of her consulting work for Aceplan. Parker was paid $3000.00 per month for her services. Parker, however, only worked for approximately one (1) month.
>
> 9. In January 2018, Parker agreed to return to work with Aceplan, which had been struggling to pay expenses and it was Williamson's plan to increase marketing with Parker's help to increase the profitability of the company.
>
> 10. Parker agreed to return to work with Aceplan, but told Williamson that she would create a separate LLC – VPSolutions – for the purpose of collecting payments from parents and students for the test preparation and tutoring services.
>
> 11. Over the next three (3) months, many students were enrolled in SAT preparation classes and paid for tutoring services. Payments for all were collected by Parker and VPSolutions. Parker, however, never gave Williamson access to the bank account to pay such things as payroll, rent and utilities. Williamson used his own funds to pay these expenses.

[1] On appeal, the parties present contradictory factual histories of the events leading up to Mr. Williamson's complaint. Because we are reviewing the grant of a pre-trial motion to dismiss, we assume the facts to be as presented in Mr. Williamson's complaint. *Scarbrough v. Transplant Res. Ctr. of Md.*, 242 Md. App. 453, 456 n.1 (2019); *see Gasper v. Ruffin Hotel Corp. of Md., Inc.*, 183 Md. App. 211, 228 n.8 (2008) (Appellate court is required to assume that the facts proffered by plaintiff in complaint are true when reviewing the trial court's grant of defendant's motion to dismiss.), *aff'd*, 418 Md. 594 (2011).

12. In March 2018, Williamson, having paid the payroll and other expenses, sought reimbursement from Parker, and asked that she make a payment to him of $9000.00, from the funds collected by VPSolutions.

13. Parker informed Williamson that there was money in the account, but that she would not pay him unless he [paid] her $20,000. Parker finally relented and gave Williamson a check – but only for $7000.00.

14. Thereafter, Parker told Williamson that she would not release any additional funds to him unless he signed an agreement with her that she would receive thirty [percent] (30%) of the profits of Aceplan. Williamson, rightfully, refused to sign.

15. A few days later, Williamson went to Aceplan's office on a Sunday to discover Parker and her husband were taking files and other documents belonging to Aceplan.

16. Parker continued to collect payments for Aceplan's services through June 2018, and refused to give Williamson any accounting of the funds collected. Nor did she pay any of Aceplan's expenses, causing the company to become defunct.

17. As a result, Williamson was unable to provide services to students who had paid, and was forced to give refunds. When he could not give refunds due to lack of access to the funds held by Parker, many parents brought lawsuits against Williamson, and judgments have been entered against him.

18. Upon information and belief, Parker collected approximately $50,000.00, in payments on behalf of Aceplan. Upon information and belief, Parker transferred these funds to her personal bank accounts for her own personal use.

II.

Replevin Action

On January 22, 2019, Mr. Williamson filed a *pro se* complaint for replevin in the District Court of Maryland, seeking $25,000, plus $10,000 in interest, the return of all client

files or their value, plus "damages of $30,000 for [their] detention in an action of detinue."

He described his replevin claim as follows:

> I recruited Mrs. Velinda Parker to join my company in Sept. 2017. She joined in Oct[.] 2017 and left [in] Nov. 2018. She returned in Jan[.]–Jun. 2018. Serving as Managing Partner and tasked with managing the company finances and payments assigned to a designated account.
>
> Mrs. Parker failed to serve the company fairly and has broken trust and has misappropriated funds given [to] her. Pocketing cash as . . . was responsible for processing payments and depositing same into the assigned account of VPSolutions, an agency assigned to deposit funds.
>
> From Jan[.]–June 2018[,] Mrs. Parker collected from clients $12,000 cash and over $40,000 checks and credit cards. The bank statements showed none of the cash received [was] deposited. The funds deposited were used to make monthly personnel payments for her bills, car note, and not on Aceplan Prep expenses.
>
> I am asking Mrs. Parker to return to Aceplan Prep all client records, receipt books, marketing materials, student folders, text books and materials she removed from the office. This was done willfully to undermine the operation of Aceplan Prep and has caused significant damages to the company.
>
> The bank statements also showed Mrs. Parker transferring money to multiple bank accounts and has not returned the funds to the Company to whom it belonged.

On March 1, 2019, the District Court held a show cause hearing.[2] Mr. Williamson's request for relief was denied. As explained in detail, *infra*, when a claimant fails to show probable cause that he or she is entitled to return of the property, the action continues "in

[2] The only documents pertaining to the replevin action included in the record before this Court were the District Court docket entries, Mr. Williamson's complaint, and the District Court's handwritten order granting Ms. Parker's motion to dismiss with prejudice. As a result, the remaining details from that case are unclear from the record before this Court.

detinue." *111 Scherr Lane, LLC v. Triangle Gen. Contracting, Inc.*, 233 Md. App. 214, 240 (2017).

Ms. Parker filed a motion to compel discovery and for discovery sanctions. At a subsequent hearing, Ms. Parker moved to dismiss the complaint after the Court denied a request for continuance by Mr. Williamson.

In a handwritten order by the District Court, dated September 12, 2019, the Court granted Ms. Parker's motion to dismiss with prejudice "except for any newly discovered information." There is no docket entry reflecting a hearing on this issue, but Ms. Parker's counsel proffered at oral argument, and Mr. Williamson's counsel did not dispute, that the parties appeared before the District Court in September 2019, at which time Mr. Williamson (represented by counsel) requested a continuance for additional time to produce the requested discovery. After that request was denied, Ms. Parker moved to dismiss the action. Counsel further proffered that the dismissal was due to both Mr. Williamson's discovery failures and his inability to proceed after the continuance was denied.[3]

[3] We note that the docket entries are inconsistent. At one point, they state that the complaint was dismissed pursuant to Md. Rule 3-506, which provides for voluntary dismissal by a plaintiff. A different entry states that the motion to dismiss by the defendant is granted with prejudice. The latter entry is consistent with the court's handwritten note dismissing the case with prejudice. The transcript of this hearing was not prepared or submitted to this Court, and therefore, we are unable to independently confirm this procedural history.

III.

Circuit Court Complaint

On December 12, 2019, after his District Court complaint was dismissed, Mr. Williamson filed a complaint against Ms. Parker in the Circuit Court for Prince George's County, alleging breach of contract, fraud, and conversion. In the breach of contract count, Mr. Williamson alleged that he and Ms. Parker had entered into an agreement "whereby [Ms.] Parker would collect the payments made to Aceplan, and pay all expenses of Aceplan." He asserted that she breached that agreement "by failing to pay the expenses of Aceplan and keeping the funds for her own personal gain." As a result, he had "suffered damages, including the loss of his business." With respect to his fraud claim, he proffered that Ms. Parker intentionally and falsely misrepresented to him that she would collect the payments on behalf of Aceplan and pay the business expenses. The conversion claim alleged that, "[b]y keeping the funds paid to Aceplan and Williamson, and transferring those funds to her own personal use, Parker wrongfully converted Williamson's property." He also asserted that, "[b]y taking files and other documents from Williamson's office at Aceplan, Parker wrongfully converted Williamson's property." He alleged that the "money and property" in question had a value "in excess of $50,000." Mr. Williamson requested compensatory damages ("to be proven at trial"), punitive damages ("to be determined at trial"), and reasonable attorney's fees.

On January 24, 2020, prior to filing an answer to the complaint, Ms. Parker filed a Motion to Dismiss, or in the Alternative, Motion for Summary Judgment. She argued that

dismissal was warranted because Mr. Williamson's claims were barred as a matter of law by res judicata and collateral estoppel. With respect to res judicata, Ms. Parker asserted that the complaint should be dismissed because the District Court case and the present case were based on the "same set of operative allegations." She described the similarity as follows:

> Although phrased differently, the substance of the claims in both pleadings are identical. In the first action, [Mr. Williamson] sought to regain possession of funds and tangible items and/or their value. In the current pleading before this [c]ourt, [Mr. Williamson] again seeks the value of the funds and items that he claims that [Mrs. Parker] took from him.

She argued that the District Court order provided that the complaint was dismissed with prejudice and could be refiled only upon "newly discovered information," and because Mr. Williamson had not alleged any new evidence in his circuit court complaint, it must be dismissed.

With regard to collateral estoppel, Ms. Parker argued that Mr. Williamson unsuccessfully sought to recover specific items (or their value) and money in the District Court suit, and therefore, the "crux of his issues before the [circuit court were] the same and the District Court ha[d] conclusively decided that issue." She asserted that, as a result, Mr. Williamson was precluded from bringing the current action in the circuit court "with the same set of operative facts and issues stemming from the same transactions and/or occurrence []under the guise of new 'labeled' claims."

Ms. Parker further argued that the complaint should be dismissed because the parties' Partnership Agreement required that disputes be resolved by mediation and/or

arbitration.[4] Alternatively, Ms. Parker requested summary judgment in her favor based on res judicata, collateral estoppel, improper party, and "wrong forum."[5]

Ms. Parker attached four exhibits to her motion: (1) Mr. Williamson's replevin complaint in the District Court; (2) the District Court's handwritten order dismissing that action with prejudice except for any newly discovered information; (3) the District Court docket entries for that action; and (4) the parties' Partnership Agreement dated March 9, 2018, which detailed the business arrangement between Aceplan and VPSolutions and contained a dispute resolution provision providing that any disputes must be submitted to mediation, and if unsuccessful, to arbitration.

On February 27, 2020, Mr. Williamson filed an opposition to Ms. Parker's motion to dismiss. He argued that res judicata and collateral estoppel did not apply because his claims before the District Court were "wholly different" from those in his circuit court complaint. Specifically, the District Court complaint was a replevin action for the return of certain documents, while the present complaint was for breach of contract, fraud, and conversion related to the funds he alleged were withheld and misappropriated by Ms. Parker. Furthermore, he argued these doctrines were inapplicable because "there was no final adjudication on the issues of breach of contract and fraud."

[4] Although it is unclear from the circuit court's order whether its dismissal was based, even in part, on this ground, the parties do not raise this issue on appeal. Accordingly, we will not address it here.

[5] Because the circuit court did not grant the motion for summary judgment, we need not describe the details of this request for relief.

On May 20, 2020, the circuit court entered an Order granting Ms. Parker's motion to dismiss. The court did not hold a hearing prior to issuing the Order, and the Order did not state a basis for the dismissal.

This appeal followed.

STANDARD OF REVIEW

In *Lamson v. Montgomery County*, 460 Md. 349, 360 (2018), the Court of Appeals explained the standard of review for a grant of a motion to dismiss, as follows:

> "We review the grant of a [M]otion to [D]ismiss *de novo*." *Reichs Ford Rd. Joint Venture v. State Roads Commission of the State Highway Administration*, 388 Md. 500, 509, 880 A.2d 307, 312 (2005). In determining whether the decision of a lower court was legally correct, we give no deference to the trial court findings and review the decision under a *de novo* standard of review. *See Walter v. Gunter*, 367 Md. 386, 392, 788 A.2d 609, 612 (2002). *See also Breslin v. Powell*, 421 Md. 266, 277, 26 A.3d 878, 885 (2011).

DISCUSSION

I.

Res Judicata

Mr. Williamson argues that the circuit court erred in granting Ms. Parker's motion to dismiss on the grounds of res judicata. He asserts that he did not have "ample procedural means" to fully develop the breach of contract, fraud, and conversation claims in the District Court replevin action, and therefore, they were not the "same claim." He argues that the District Court has exclusive jurisdiction over a replevin action, an action at law regarding the unlawful possession of personal property, and the only remedy available in a replevin action is the immediate return of the property or its value. In the circuit court

case, however, he had requested relief "far beyond the loss of the personal property," including compensatory and punitive damages, which are unavailable in a replevin or detinue action.

Ms. Parker contends that the circuit court properly dismissed the complaint on res judicata grounds. She argues that the two actions were premised on the same set of facts, and the present claim "only seeks a different conclusion." She asserts that, although the replevin action was within the exclusive jurisdiction of the District Court, once Mr. Williamson's "request for pre-judgment immediate return of the items was denied," the action became one in "detinue," and if Mr. Williamson sought a judgment for the value of the goods, his recourse was to transfer the case or "dismiss, voluntarily and without prejudice, and to commence a new action in a circuit court." *Wallander v. Barnes*, 341 Md. 553, 572 (1996). Ms. Parker argues that the issues raised in the circuit court could have been ligated in the previous action, and therefore, his claim is barred by res judicata.

"Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action," with the rationale that the judgment already rendered "is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which with propriety could have been litigated in the first suit." *Powell v. Breslin*, 430 Md. 52, 63 (2013) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)). The doctrine "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or

could have been decided fully and fairly." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005). Res judicata applies when the following requirements are met:

> (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 was a final judgment on the merits.

Davis v. Wicomico Cty. Bureau, 447 Md. 302, 306–07 (2016) (quoting *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 392 (2000)).

The contentions in this case address the second requirement, i.e., whether the claims in the two lawsuits were identical.[6] Maryland has adopted a "transactional approach" in determining whether a matter was fairly included within the claim or action before a previous court. *Norville*, 390 Md. at 109. *Accord Kent Cty. Bd. of Educ. v. Bilbrough*, 309 Md. 487, 494, 498 (1987). Under this approach, if the two claims "are based upon the same set of facts and one would expect them to be tried together ordinarily, then a party must bring them simultaneously." *Norville*, 390 Md. at 109. "Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions."

[6] With respect to the third requirement, there is no dispute that the parties in both lawsuits were identical. Mr. Williamson argues, in a footnote and without a citation of authority, that the District Court order was not a final order on the merits because the case was dismissed for discovery failures, and although "the dismissal was 'with prejudice,' it allowed for the resumption of the matter upon the discovery of new evidence within the statute of limitations." We disagree. We interpret the District Court's order to be a final judgment dismissing the action unless a new trial is warranted due to newly discovered evidence pursuant to Md. Rule 3-535(c) ("On motion of any party filed within 30 days after entry of judgment, the court may grant a new trial on the ground of newly-discovered evidence that could not have been discovered by due diligence in time to move for a new trial pursuant to Rule 3-533."). Accordingly, we conclude that the order dismissing the replevin complaint constituted a final judgment for purposes of res judicata.

Id. "Equating claim with transaction, however, is justified only when the parties have ample procedural means for fully developing the entire transaction in the one action going to the merits to which the plaintiff is ordinarily confined." *Bilbrough*, 309 Md. at 499 (quoting Restatement (Second) of Judgments § 24 (Am. Law Inst. 1982)).

Because the crux of the question before us is whether Mr. Williamson's circuit court claims could have been brought as a part of the District Court replevin/detinue actions, we begin our analysis with an explanation of replevin and detinue claims. "In a replevin action, a party seeks . . . to recover specific goods and chattels to which he or she asserts an entitlement to possession." *111 Scherr Lane, LLC*, 233 Md. App. at 237 (quoting *Dehn Motor Sales, LLC v. Schultz*, 439 Md. 460, 486 (2014)). *Accord* Md. Rule 12-601. As this Court has explained, "[a]t common law, an action for replevin could be commenced by filing a bond with the clerk of the court in double the value of the personal property claimed to be unlawfully detained by the defendant." *111 Scherr Lane, LLC*, 233 Md. App. at 238. "Upon the approval of the bond, the clerk would issue a writ directing the sheriff to seize the goods and place them in the plaintiff's possession" prior to a hearing. *Id.*

In 1972, the United States Supreme Court held that such prehearing seizures of property violated due process. *Fuentes v. Shevin*, 407 U.S. 67 (1972). Accordingly, "the Court of Appeals adopted amended rules that 'provide[d] a judicial hearing early in the procedure, so that the writ of replevin could issue as expeditiously as constitutionally and practically possible.'" *111 Scherr Lane, LLC*, 233 Md. App. at 238 (quoting *Wallander*, 341 Md. at 568). Under the amended rules, actions for replevin "commenced by the filing

of a 'statement of claim . . . alleg[ing] that the defendant unjustly detains the property,' seeking the return of the property, and, in certain cases, seeking damages for the detention." *Id.* (quoting *Wallander*, 341 Md. at 569). *Accord* Md. Rule 12-601(a) ("A person claiming the right to immediate possession of personal property may file an action under this Rule for possession before judgment.").

The District Court has exclusive jurisdiction over replevin and is "required to hold a pre-seizure hearing on a show cause order and grant the writ if the plaintiff [makes] a showing of a 'reasonable probability' that he or she [is] entitled to the return of the property." *111 Scherr Lane, LLC*, 233 Md. App. at 238–39 (quoting *Wallander*, 341 Md. at 568–69). If the writ is denied, the action will "proceed in detinue." *Wallander*, 341 Md. at 558, 569. *Accord* Md. Rules 12-601 (replevin) and 12-602 (detinue).

"Modern replevin in Maryland is a pre-judgment, but post-probable cause determination, seizure." *Id.* at 572. If the plaintiff satisfies his or her burden, the court issues "a writ of replevin directing the sheriff to place the plaintiff in possession of the property." *111 Scherr Lane, LLC*, 233 Md. App. at 246. The case then converts to detinue, and "the plaintiff must prove by a preponderance of the evidence entitlement to a final judgment of possession; any damages claimed for the detention of the property; and, as to property not recovered, entitlement to damages for the value of that property." *Id. Accord* Md. Rule 12-602(d)(1).

Similarly, "[i]f probable cause is not established, so that replevin is denied, the action is no longer replevin, it is detinue." *Wallander*, 341 Md. at 572. *Accord 111 Scherr*

Lane, LLC, 233 Md. App. at 240 ("If the plaintiff already has instituted a replevin action pursuant to Rule 12-601, however, that action automatically will convert to one for detinue after the show cause hearing."). "[I]f the value of the property remains at issue and that value and any damages claimed exceed the monetary jurisdiction of the District Court, . . . the action will be transferred to the circuit court." *Id.* *Accord* Md. Rules 12-602(a)(3); 12-601(h); Md. Code Ann., Cts. & Jud. Pro. ("CJ") Article § 11-104(a) (2018 Repl. Vol) ("In an action of detinue a plaintiff may recover the personal property and damages for the wrongful detention of the property.").

The question here is whether Mr. Williamson's circuit court claims, which included breach of contract, fraud, and conversion, could have been brought in the previous litigation once the replevin action was converted to a detinue action following the show cause hearing. *Colandrea*, 361 Md. at 392 ("A judgment between the same parties . . . is a final bar to any other suit upon the same cause of action and is conclusive . . . as to matters that could have been litigated in the original suit."). As explained below, we answer that question in the affirmative.

Mr. Williamson's initial suit was a replevin action seeking the return of certain files and documents, as well as money that he alleged was misappropriated by Ms. Parker. At oral argument, counsel for Mr. Williamson clarified the somewhat confusing damages request made in the replevin complaint, stating that Mr. Williamson had requested damages in the amount of $30,000, the limit of the jurisdiction of the District Court. *See* CJ § 4-401(1) (The "District Court has exclusive original jurisdiction" in "[a]n action in contract

or tort, if the debt or damages claimed do not exceed $30,000."). As indicated, once the action became one in detinue, Mr. Williamson was entitled to seek the value of the property and damages resulting from its detention. *See* Md. Rule 12-602(d); CJ § 11-104(a); *111 Scherr Lane, LLC*, 233 Md App. at 240 (In an action for detinue, the court "may award damages caused by the unlawful detention of the property or for damage to the property during the detention.").

If Mr. Williamson's claims for breach of contract, fraud, and conversion sought damages within the jurisdictional limit of the District Court after the action was converted in detinue, he had a choice to continue with the proceedings in the District Court or circuit court. *See* CJ §§ 4-401(1), 4-402(d) (The District Court has concurrent civil jurisdiction in "[a]n action in contract or tort" for claimed debts or damages greater than $5,000 but not exceeding $30,000.). He could have added his claims for fraud, breach of contract, and conversion in his District Court action. *See* Md. Rule 3-341(a), (c) (In the District Court, "[a] party may file an amendment to a pleading at any time prior to 15 days of a scheduled trial date" in order to "change the nature of the action" or "to make any other appropriate change.").

If Mr. Williamson's additional claims for damages exceeded the District Court's jurisdictional limit, the claims could have been pursued in the circuit court. *See* Md. Rule 12-602(a)(2)(B) (Detinue actions may be filed "in either the District Court or a circuit court if the value of the property and any damages claimed are within the concurrent jurisdiction of those courts."); Md. Rule 3-506(c) (District Court voluntary dismissal rule); *see also See*

v. Illinois Gaming Board,__N.E.3d__, No. 1-19-2200, at *5–6 (Ill. App. Ct. Aug. 18, 2020) (Claim preclusion prevented claim from being brought in state court following a federal court's dismissal of the same claim, in part because he could have "sought a voluntary dismissal and then refiled his entire action in state court.").

Because Mr. Williamson's claims could have been brought in the previous litigation, his current complaint was barred by res judicata. The circuit court properly granted the motion to dismiss the complaint.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.