

Circuit Court for Allegany County
Case No. C-01-CV-18-000425

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 566

September Term, 2021

TAIWO OKUSAMI, M.D.

v.

JOHN CULLEN, *et al.*

Friedman,
Beachley,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: July 22, 2022

*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.

Appellant, Taiwo Okusami, M.D., appeals the grant, by the Circuit Court for Allegany County, of a motion for summary judgment in favor of appellees, Thomas B. Finan Center and Maryland Department of Health. Dr. Okusami asks us to consider whether the circuit court erred in granting appellees’ motion for summary judgment on the ground that *res judicata* precluded Dr. Okusami from re-litigating the same facts and issues he had presented in a concurrent federal lawsuit, which had concluded after the federal court granted appellees’ motions to dismiss and for summary judgment. For the reasons that follow, we affirm the circuit court’s entry of summary judgment.

BACKGROUND

Beginning in 2011, Dr. Okusami, who is Black and of Nigerian descent, was employed as a staff psychiatrist at the Thomas B. Finan Center, a State-run psychiatric hospital in Allegany County, pursuant to a series of one-year contracts. The pertinent July 2016-June 2017 contract specified that Dr. Okusami was not a Maryland State employee and was not entitled to the benefits of State employment. The contract permitted the Center to, “in its sole discretion and without cause, terminate this Contract at any time.” On October 17, 2016, John Cullen, the Center’s chief executive officer and Dr. Okusami’s administrative supervisor, terminated Dr. Okusami’s at-will employment with the Center without cause.¹

Dr. Okusami then filed a claim with the Maryland Equal Employment Opportunity Commission, alleging discrimination in his termination from the Center. The EEOC issued

¹ John Cullen was originally a named defendant in Dr. Okusami’s lawsuit but was dismissed.

Dr. Okusami a right-to-sue letter, and he filed suit against the Center and the Maryland Department of Health in the U.S. District Court for the District of Maryland, alleging violations of Title VII of the Civil Rights Act of 1964 (“Title VII”) and Maryland law. His complaint included counts of racial discrimination based on race, harassment and hostile work environment, retaliation, and wrongful termination.

Soon thereafter, Dr. Okusami filed suit in state court against the Center, the Department, and John Cullen, alleging violations of the Maryland Fair Employment Practices Act (“MFEPA”). MD. CODE, STATE GOV’T § 20-606. His state complaint included counts of discrimination on the basis of race, discrimination on the basis of national origin, compensatory discrimination on the basis of race, retaliation, breach of contract, and gross negligence.

The federal court dismissed the counts in Dr. Okusami’s complaint alleging wrongful termination, harassment and hostile work environment, and retaliation. The federal court concluded that: (1) it lacked subject matter jurisdiction under the Eleventh Amendment to consider Dr. Okusami’s charge of wrongful termination against the State;² (2) Dr. Okusami had failed to state a claim as to the count of harassment and hostile work environment because his allegations were “woefully inadequate in regard to the element of severe or pervasive so as to alter the terms or conditions of employment;” and (3) Dr. Okusami had failed to state a claim as to the count of retaliation because Title VII “does

² Despite the federal court’s determination that it lacked subject matter jurisdiction over his wrongful termination claim, Dr. Okusami did not include such a count in his State court complaint.

not prohibit private employers from retaliating against employees based upon [their] opposition to discriminatory practices that are outside the scope of Title VII.” *Okusami v. Maryland Dep’t of Health & Mental Hygiene*, No. CV ELH-18-1701, 2019 WL 1003607 (D. Md. Feb. 28, 2019).

Thereafter, the Center and the Department moved for summary judgment as to the single remaining count in Dr. Okusami’s federal complaint, discrimination on the basis of race. In a comprehensive memorandum opinion and order, the federal court granted the Department’s motion, concluding that “there is no evidence of race discrimination or disparate treatment” because: (1) Dr. Okusami conceded at deposition that “his termination was not racially motivated, and that is the only conduct that constitutes an adverse employment action” subject to remedy under Title VII; and (2) the comparators he identified as being treated differently from him based on race were not “similarly situated in all relevant respects.” And, even assuming, *arguendo*, that Dr. Okusami had asserted a *prima facie* claim of discrimination, the federal court continued, the Center had countered with a legitimate, non-discriminatory reason for his termination—that he was an at-will employee who could be terminated without cause under the terms of his employment contract—and there was no evidence that the Center’s proffered reason was a pretext for discrimination. Dr. Okusami did not appeal the federal court’s order, which stands as a final judgment.

In the state action, the court responded to the defendants’ motion to dismiss by dismissing Mr. Cullen and the gross negligence claim from the lawsuit, but allowing the remaining counts to proceed against the Center and the Department. Later, however, the

Center and the Department moved for summary judgment, arguing that the federal court’s dismissal of Dr. Okusami’s complaint with prejudice had a preclusive effect on his state suit alleging the same claims and entitled the Center and the Department to judgment in their favor as a matter of law.

Dr. Okusami opposed the motion for summary judgment, asserting that discovery in the state case had revealed pertinent facts that were not before the federal court when it dismissed his suit and that the *res judicata* doctrine did not bar his claims because they were not identical to those decided in the federal litigation. In addition, he continued, his claim of breach of contract sounded in state law and could not have been litigated in the federal lawsuit.

The state court heard argument on the defendants’ motion for summary judgment, and on January 19, 2021, granted the defendants’ motion and entered judgment against Dr. Okusami. The state court explained that the doctrine of *res judicata* barred Dr. Okusami’s discrimination claims because they arose from “the exact same series of events” as those pleaded in the federal case. Moreover, although Dr. Okusami had “reformulated some of the claims to assert new claims under Maryland law,” all of his legal theories in the state case were “grounded in the same fundamental claim regarding his treatment as an employed physician at the Finan Center,” which could and should have been asserted in the federal lawsuit. In addition, the state court found that Dr. Okusami’s important “newly discovered ‘evidence’” did not have “any application to the case in its current posture” because it was related to the Center’s compliance with its own internal policies and standards of care and was not pertinent to the discrimination and breach of contract claims.

As to Dr. Okusami’s claim that the Center breached his employment contract by threatening his continued employment unless he ceased rendering opinions in opposition to other staff members, the state court noted that the contract expressly contained an at-will termination clause, which permitted termination for any reason, so long as it was not illegal. And, like the federal court, the state court could find “no evidence in the record” that Dr. Okusami was terminated for an illegal reason. Finally, the state court concluded that because the breach of contract claim could have been raised in the federal court as part of that court’s supplemental jurisdiction, the federal court’s ruling was *res judicata* to that claim, as well.³ This appeal followed.⁴

DISCUSSION

Dr. Okusami challenges the state court’s grant of summary judgment in favor of the Center and the Department, contending that his case “was not subject to *res judicata* despite the dismissal of [his] federal case” because “newly obtained discovery” in the state case was not before the federal court before it issued its dispositive rulings. He further argues

³ The state court also concluded that Dr. Okusami had offered “little support” for his claim of discrimination based on national origin and that because he had not included that charge in his EEOC filing, he had not exhausted his administrative remedies, requiring dismissal of that count of his complaint. Dr. Okusami makes no specific argument in his brief that the state court erred in so ruling. We, therefore, do not address these.

⁴ Due to a clerical error by the state court, Dr. Okusami did not receive the memorandum and order until April 21, 2021, well after the time for noting an appeal had passed. He therefore filed an application for leave to appeal belatedly, which we treated as a notice of appeal. Although we granted the defendants’ motion to dismiss the appeal as untimely filed, we did so without prejudice to any request by Dr. Okusami that the state court rescind and reinstate the order so that it could be appealed. Dr. Okusami filed such a request, and on June 16, 2021, the state court rescinded and reissued its order. Dr. Okusami then filed a timely notice of appeal.

that the state court erred in granting the defendants’ motion for summary judgment with respect to his breach of contract claim. The federal court, he says, did not conclusively make a determination of fact regarding that claim because it did not have the jurisdiction to decide that controversy, which was based on state law claims.

Summary judgment is appropriate when the material facts in a case are not subject to genuine dispute and the moving party is entitled to judgment as a matter of law. MD. RULE 2-501(f). This Court reviews a trial court’s decision to grant summary judgment without deference because the questions posed by a motion for summary judgment are questions of law. *Asmussen v. CSX Transp., Inc.*, 247 Md. App. 529, 558 (2020). Our review of the record is made “in the light most favorable to the non-moving party,” and we will “construe any reasonable inferences which may be drawn from the facts against the [moving party].” *Livesay v. Baltimore Cty.*, 384 Md. 1, 10 (2004).

Res judicata is a legal principle that prevents “the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that 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) (cleaned up). “*Res judicata* protects the courts, as well as the parties, from the attendant burdens of relitigation,” *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 107 (2005), and keeps a litigant from getting a “rematch after a defeat fairly suffered, in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise.” *Astoria Fed. S. & L. Ass’n v. Solimino*, 501 U.S. 104, 107 (1991).

Under Maryland law, *res judicata* applies if: (1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined or that which could have been raised and determined in the prior litigation; and (3) there was a final judgment on the merits in the prior litigation. *R & D 2001, LLC v. Rice*, 402 Md. 648, 663 (2008). When these three elements are present, “the first claim is merged into the judgment and bars the second claim.” *Boyd v. Bowen*, 145 Md. App. 635, 655 (2002).

Applying the elements to the matter before us, we conclude that the state court properly found that the claims asserted in Dr. Okusami’s complaint were barred by *res judicata* because his state court claims were either fully raised and litigated in the federal court, or could have been raised in the federal action.

First, the parties in the state litigation were the same as the parties in the earlier federal litigation. Dr. Okusami was the plaintiff in both actions, and the Center and the Department were the defendants in both actions. Although the state complaint added Mr. Cullen as a defendant who was not named in the federal action, Dr. Okusami’s allegations of discrimination in his termination were aimed at the Center and the Department, which defended against the claims. Moreover, the state court dismissed Mr. Cullen from the lawsuit prior to granting the defendants’ motion for summary judgment.

Second, Dr. Okusami’s causes of action in his state court complaint stem from the same set of facts concerning alleged discrimination, in violation of the MFEPA, and either were or could have been litigated in the federal action based on alleged violations of Title VII. *See Chappell v. Southern Maryland Hosp., Inc.*, 320 Md. 483, 494 (1990) (explaining

that Maryland courts read State MFEPA provisions “in harmony” with federal Title VII provisions and look to federal court decisions interpreting Title VII). Dr. Okusami’s addition to the state court action of the “new” claim of breach of contract is the only real difference between it and the claims asserted in the federal court and does not provide an exception to the principles of *res judicata* because the “new” claim was still derived from the same set of facts and claims set forth in the federal action.⁵ “By splitting theories applicable to the same case, [Dr. Okusami] seeks a second bite at the apple in the Maryland court system, which *res judicata* does not permit.” *Norville*, 390 Md. at 112.⁶

Moreover, as the state court pointed out, the federal court could have exercised supplemental jurisdiction over the state law claim of breach of contract. Under 28 U.S.C. § 1367(a), if a federal district court possesses original jurisdiction in a civil proceeding, it “shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy[.]” In other words, once a federal district court has valid original jurisdiction over a claim, it can, in its discretion, exercise supplemental jurisdiction over additional state claims if the claims arose out of “a common nucleus of operative fact” or “central fact

⁵ Dr. Okusami also included a count in his state court complaint alleging gross negligence on the part of Mr. Cullen, but the court dismissed that count before the Center and the Department moved for summary judgment.

⁶ In addition, Dr. Okusami’s contract provided that the Center was permitted to terminate him for any reason or no reason, so long as it was not an illegal reason. The federal court found that “there is no evidence of race discrimination or disparate treatment,” the only potential illegal reasons for termination raised by Dr. Okusami. That finding had a preclusive effect upon the state court count of breach of contract.

pattern” such that the plaintiff would ordinarily be expected to try the claims in one judicial proceeding. *White v. Cty. of Newberry, S.C.*, 985 F.2d 168, 171-72 (4th Cir. 1993). Because Dr. Okusami’s breach of contract claim revolved around the exact same facts as his discrimination claims, that count could have been raised in the federal court and is therefore barred by the doctrine of *res judicata*.⁷

Third, and finally, there is no dispute that the federal court rendered a final judgment in the prior litigation. *See deLeon v. Slear*, 328 Md. 569, 580 (1992) (noting that summary judgment for the defendant is a valid and final judgment and has a preclusive effect).

All the elements of *res judicata* are satisfied. Thus, the state court did not err in entering summary judgment in favor of the Center and the Department.

**JUDGMENT OF THE CIRCUIT COURT
FOR ALLEGANY COUNTY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

⁷ Dr. Okusami’s claim that he “obtained and engaged in discovery [that] was not conclusively determined during the federal case” and “was not before the federal court prior to the issuance of its dispositive ruling” does not change the analysis. The federal court action was filed in June 2018, and the state court action was filed in September 2018, within months of each other and almost two years after Dr. Okusami’s termination. The “newly obtained discovery” identified by Dr. Okusami here, including the deposition testimony of the Center’s corporate representative and human resources director and the disclosure of the Center’s bylaws and newly-retained expert witness opinion, could have been obtained during the pendency of the federal litigation. Thus, we hold that this evidence could have been discovered with the exercise of ordinary diligence and, moreover, as the state court found, was not relevant to the discrimination or breach of contract claims.