Circuit Court for Prince George's County
Case No. CAE20-06826

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1771

September Term, 2021

EDWARD MCCAWLEY

v.

TRUSTEE OF MCCAWLEY FAMILY TRUST

Zic,
Tang,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: January 10, 2023

* 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.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Edward McCawley, appellant, filed a complaint in the Circuit Court for Prince George's County against Maureen Burke, Trustee of the McCawley Family Trust, alleging that Ms. Burke had breached her duties as Trustee and asking that she be removed as Trustee.[1] The circuit court granted Ms. Burke's motion to dismiss on the grounds that the complaint was barred by the doctrine of res judicata. Edward McCawley appeals, presenting one question for our review: whether the circuit court erred in applying the doctrine of res judicata. We find no error and shall affirm.

BACKGROUND

Frank and Margaret McCawley (the "McCawleys") were married and had five biological children: Maureen Burke, Edward McCawley, Patrick McCawley, Nancy Williams, and William McCawley. The parties, Edward McCawley and Ms. Burke, are brother and sister.

On February 2, 1999, the McCawleys created the McCawley Living Trust (the "Living Trust"). The property transferred to the Living Trust includes all "real, personal, tangible, and intangible property," but not life insurance policies, pensions, or retirement plans. The McCawleys were Co-Trustees, but if they were unable to serve in that capacity, Ms. Burke, William McCawley, and Edward McCawley were named as Successor Trustees, in that order. Each of the five children were named beneficiaries and

[1] Edward McCawley has proceeded pro se at all times during this case. Ms. Burke has been represented by counsel. "The procedural, evidentiary, and appellate rules apply alike to parties and their attorneys. No different standards apply when parties appear pro se." *Gantt v. State*, 241 Md. App. 276, 302 (2019) (quotation marks and citation omitted).

were to receive an equal share of the trust assets upon the death of their parents. About a decade later, Margaret McCawley executed a durable power of attorney, appointing her husband as her attorney-in-fact, with Ms. Burke, William McCawley, and Edward McCawley as alternate attorney-in-fact, in that order. Shortly thereafter William McCawley died.

Early in 2012, two board-certified physicians issued certifications stating that Margaret McCawley had dementia and was unable to manage her personal affairs and property effectively.

On June 1, 2012, Frank McCawley and Margaret McCawley, by and through her power of attorney, created the McCawley Family Trust (the "Family Trust").[2] The property transferred to the Family Trust includes all personal property, three homes, and insurance policies, pensions, and retirement plans. Two of the main purposes of the Family Trust were to avoid probate and ensure trust assets would not be considered a resource for need-based government benefits. Under the terms of the Family Trust, Frank McCawley was the sole Trustee, and Ms. Burke and Edward McCawley were named Successor Trustees, in that order. The trust delineated three different types of beneficiaries, and Edward McCawley was a named beneficiary of each type.[3]

[2] It is unclear from the record how the Living Trust and Family Trust operate together. Neither trust mentions the other, although the Living Trust has a provision for merging trusts. However, the listed assets in the Family Trust seem to absorb the assets of the Living Trust.

[3] The Family Trust created "principal beneficiaries," who were to receive trust income for their "health, education, and maintenance" while the McCawleys were alive. (continued)

Frank McCawley and Margaret McCawley, by and through her power of attorney, amended the Living Trust twice. In 2014, Margaret McCawley was replaced by Ms. Burke as Co-Trustee with Frank McCawley; son William McCawley, who had died, was removed as a Successor Trustee; and son Patrick McCawley was added as a Successor Trustee behind Edward McCawley. In 2015, Edward McCawley was removed as a Successor Trustee, and two others were added as Successor Trustees behind Patrick McCawley.

On January 7, 2016, Frank McCawley, as the sole Trustee, amended the Family Trust: Edward McCawley was removed as a principal beneficiary and replaced by Patrick McCawley, removed as a Trust B beneficiary, and removed as a residuary beneficiary. Edward McCawley was also removed as a Successor Trustee and replaced by Patrick McCawley.

Frank McCawley died on November 19, 2016, leaving Ms. Burke as the sole Trustee of both trusts and as Margaret McCawley's attorney-in-fact under Margaret McCawley's durable power of attorney. Roughly four months later, Margaret McCawley died. Ms. Burke then sent to Edward McCawley, among others, a list of their parents'

Ms. Burke, Edward McCawley, Ms. Burke's daughter, and Ms. Burke's son-in-law were named principal beneficiaries. Upon the death of one of the McCawleys, a "McCawley Trust B" was to be created, and each of the four living children were designated equal beneficiaries of those specified assets. Upon the death of both McCawleys, the Family Trust provided for the distribution of the remaining trust assets to "residuary beneficiaries." Those beneficiaries were also the four living children, who were each to receive 20% shares, and two granddaughters, who were to each receive 10% shares. The Family Trust also provided that upon the McCawleys' deaths, "the Trustee shall distribute any remaining tangible personal property equally to our children."

personal residual property totaling $19,017.32. Edward McCawley subsequently filed three complaints, which we shall relate in detail below.

First Complaint – 2017

On November 3, 2017, Edward McCawley filed a complaint titled "Petition for 1/5 Share of the Estate of Margaret A. McCawley, [W]hich Is Valued at Greater [T]han $200,000." Although Edward McCawley filed suit against Ms. Burke individually, his allegations against Ms. Burke were as Trustee under the Living Trust. He alleged Ms. Burke had failed to provide a full accounting of and had not permitted him access to the assets of the Living Trust. He alleged she and Frank McCawley, as Co-Trustees, had "disrupt[ed] the estate plan established by" Margaret McCawley under her durable power of attorney with the two amendments to the Living Trust.[4] He also alleged Ms. Burke had "breached her fiduciary responsibility as the [T]rustee" and made a deliberate and conscious effort "to enrich herself" and "cause severe injury" to him. He asked the court

[4] Section 6.04, under "Limitation on Powers," of Margaret McCawley's Durable Power of Attorney provided, in part:

> **Section 6.04 My Attorney-in-Fact to Avoid Disrupting My Estate Plan**
>
> If it becomes necessary for my Attorney-in-Fact to liquidate or reinvest any of my assets to provide support for me, I direct that my Attorney-in-Fact, to the extent that it is reasonably possible, avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.
>
> If it is necessary to disrupt the dispositive provisions of my estate plan, my Attorney-in-Fact will use his or her best efforts to restore my plan as soon as possible.

to order Ms. Burke, or a person assigned by the court, to provide a complete accounting of the estate.[5]

The petition did not mention the Family Trust because Edward McCawley was purportedly unaware of its existence when he filed his petition. At some point before trial, however, he became aware of the Family Trust, and the court ordered Ms. Burke to provide Edward McCawley with a copy of those trust documents, which she did. The first day of trial occurred on November 8, 2018, but trial was continued. On December 10, 2018, Edward McCawley filed a motion for leave to amend his complaint to remove Ms. Burke as Trustee, which the court denied.[6]

Trial resumed on March 18, 2019. The following day, the circuit court issued an oral ruling from the bench granting judgment to Ms. Burke. At the beginning of its ruling, the circuit court stated:

> It is also difficult to determine whether [Edward McCawley] is suing Maureen Burke in her individual capacity or in her capacity as a trustee of her family's, her parent's estate or the trust created by her parents during their lifetime.

[5] Ms. Burke asserts in her appellate brief that Edward McCawley requested that she be removed as Trustee in the 2017 case. This, however, is not supported by the record before us.

[6] Maryland Rule 2-341 governs the amendment of pleadings and provides that only with leave of court may a party file an amendment to a pleading within 30 days before trial. The general rule is that "amendments to pleadings should be freely allowed in order to promote justice." *Walls v. Bank of Glen Burnie*, 135 Md. App. 229, 236 (2000) (quotation marks and citations omitted). "Amendments are allowed so that cases will be tried on their merits rather than upon the niceties of pleading." *Id.* (quotation marks and citation omitted). Although leave to amend rests within the discretion of the trial court, leave to amend should not be granted "if the amendment would result in prejudice to the opposing party or undue delay." *Id.* (quotation marks and citations omitted).

> If this lawsuit is against Maureen Burke in her individual capacity, which I can find and which it appears to be, and I am going to find that Ms. Burke has been sued in an individual capacity, the Plaintiff's complaint fails to state a claim against Ms. Burke.
>
> She is not subject to individual liability for the -- she cannot do anything individually. She, like the Petitioner/Plaintiff was a beneficiary under the trustee [sic], as he once was, was a beneficiary under the trust.
>
> * * *
>
> [T]o the extent that you were suing her in her individual capacity, you cannot do so so the Court would grant a motion for judgment on that ground.
>
> But even if the Court is wrong regarding that, the Court finds that this case at best it being a matter of a case in equity, would ask the Court to enter a declaratory judgment requiring Ms. Burke, as trustee, to find[], number one, that Mr. Frank Francis Xavier McCawley did not have the authority under the instruments at issue to remove Edward McCawley, the Petitioner. It is Mr. McCawley's position that his father was not authorized to remove him or to, as he states, follows his mother's estate plan.

The court discussed the history and terms of both trusts and found that Frank McCawley was authorized to make the amendments to both trusts, *i.e.*, to remove Edward McCawley as a beneficiary under the Family Trust and to remove him as Trustee under both trusts. The court also reviewed the several factors to evaluate undue influence and ruled that Ms. Burke had not unduly influenced Frank McCawley.[7] After the court granted judgment to Ms. Burke, the following colloquy occurred:

[7] The record does not state why Edward McCawley's father removed him as a beneficiary under the Family Trust, but both Ms. Burke and Patrick McCawley testified at trial that they knew why their father had acted as he had.

> [EDWARD MCCAWLEY]: May I say one thing? You did not talk about the power of attorney. Did you consider that?
>
> [THE COURT]: What I did say is I found that your father was authorized to do what he did so that includes all of the evidence.
>
> [EDWARD MCCAWLEY]: Are you going to provide this, your findings, in writing at all?
>
> [THE COURT]: No, I am not. I just stated it on the record so if you attend [sic] to file an appeal, then you will get a transcript of it.
>
> [EDWARD MCCAWLEY]: But just so I can be clear, so one of my positions was that as an attorney of fact, he needed to avoid disrupting my mother's dispositive provisions. I did not hear you talk about that particularly.
>
> [THE COURT]: I have said based upon everything here, I said you father could do what he did. I said that. I found that he did not do anything wrong. That he was authorized to make the changes he made.

After further discussion, the following colloquy occurred:

> [THE COURT]: Mr. McCawley we are done. I have entered my judgment.
>
> [EDWARD MCCAWLEY]: Yes, Your Honor, but the judgment was based on -- because you said you were a little confused about the petition. So the judgment was based on me seeking something individually.
>
> [THE COURT]: I did it in the alternative. I did it alternatively whether you were seeking money from Ms. Burke or whether you were seeking a declaration that something happened and that you were entitled to be placed in the position you were.
>
> [EDWARD MCCAWLEY]: But that was based on Maureen Burke being an individual.
>
> [THE COURT]: All right. So, sir, I gave you my judgment.

Edward McCawley did not take an appeal.

Second Complaint - 2019

Four days after the circuit court's ruling in the first case, Edward McCawley filed a second complaint titled "Petition to Contest the McCawley Family Trust and [E]nforce the Estate Plan of Margaret A. McCawley as [E]stablished by her [P]rior to her [I]ncapacitation and [R]emove Maureen Burke as Trustee of the McCawley Family Trust." The complaint was against Ms. Burke as Trustee of the Family Trust. Edward McCawley contested the amendment to the Family Trust that removed him as a beneficiary, and he sought removal of Ms. Burke as Trustee of the Family Trust. On November 25, 2019, the court granted Ms. Burke's motion to dismiss the complaint on grounds of res judicata. The court subsequently denied Edward McCawley's motion to alter or amend the judgment. Edward McCawley, again, did not take an appeal.

Third Complaint - 2020

On February 20, 2020, Edward McCawley filed a third complaint titled "Petition to [R]emove Maureen Burke as Trustee of the McCawley Family Trust for [F]ailure to [A]ct in [A]ccordance with Maryland [C]ode." That complaint was again against Ms. Burke as Trustee of the Family Trust, and Edward McCawley alleged that Ms. Burke had not permitted him access to the trust property; had not made any distributions; had not provided him with a report of the trust assets; and had acted with "reckless indifference in regards to [his] interests." He further alleged that when Ms. Burke became Margaret McCawley's attorney-in-fact, she failed to restore Edward McCawley to Margaret McCawley's estate plan in which he was to receive a one-fifth share of either trust's

assets. Edward McCawley sought Ms. Burke's removal as Trustee of the Family Trust. On October 20, 2020, Ms. Burke filed a motion to dismiss on the grounds of res judicata and requested a hearing.

On October 1, 2021, a hearing was held in the Circuit Court for Prince George's County. The court asked Edward McCawley, "Why is this not the same thing you have been filing?" The following colloquy occurred:

> [EDWARD MCCAWLEY]: So first of all, for Case CAE17-35234 [the 2017 case], that case was based on the McCawley Living Trust, not the McCawley Family Trust. At that time, as you know, when I filed the case I had never seen or read the McCawley Family Trust.
>
> THE COURT: Did you read my decision?
>
> [EDWARD MCCAWLEY]: Yes, Your Honor. In fact, I did more than that. I actually listened to the entire court case. And in fact, you stated in court clearly that I am going to find that Mrs. Burke has been sued in her individual capacity.
>
> THE COURT: Did you read -- did you listen further? Because I then said, if I am wrong, --
>
> [EDWARD MCCAWLEY]: This being a matter of a case in equity.
>
> THE COURT: I then looked at the case from her being the trustee.
>
> [EDWARD MCCAWLEY]: Well, Your Honor, actually I asked in court if I could amend my petition to include Maureen Burke as trustee and to have her removed. The opposing attorney said I am going to object to that. That is not what we are here for. And then I stated, well, I can do that, can't I?
>
> And you stated, "Well, no. I mean, you can't -- you can do that, but you cannot do that today in this proceeding."

> So you actually told me in court that I couldn't include Maureen Burke as trustee, and I couldn't present a case to have her removed.

After the hearing, the court granted Ms. Burke's motion to dismiss, stating, "this is the same animal [as the first two cases] with a different name."

On December 15, 2021, the circuit court entered a written order granting Ms. Burke's motion to dismiss. On January 10, 2022, Edward McCawley noted a timely appeal.

STANDARD OF REVIEW

Pursuant to Md. Rule 2-322(b)(2), a trial court may grant a motion to dismiss if a complaint fails to state a claim upon which relief may be granted. *See Schisler v. State*, 177 Md. App. 731, 742 (2007). The Supreme Court of Maryland (at the time named the Court of Appeals of Maryland)[8] has described the standard of review of the grant of a motion to dismiss: "[W]e accept all well-pled facts in the complaint, and reasonable inferences drawn from them, in a light most favorable to the non-moving party. Typically, the object of the motion is to argue that as a matter of law relief cannot be granted on the facts alleged." *Litz v. Md. Dept. of the Env't*, 434 Md. 623, 639 (2013) (quoting *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). The standard

[8] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

of review on appeal "is whether the trial court was legally correct." *Fioretti v. Md. State Bd. of Dental Exam'rs*, 351 Md. 66, 71 (1998) (citations omitted); *Am. Civ. Liberties Union Found. of Md. v. Leopold*, 223 Md. App. 97, 110 (2015).

DISCUSSION

"Res judicata is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because" 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) (quotation marks and citation omitted). The purpose of the doctrine of res judicata is "to avoid the expense and vexation of multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions." *Colandrea v. Wilde Lake Cmty. Ass'n*, 361 Md. 371, 387 (2000) (quoting *Jane v. State*, 350 Md. 284, 295 (1998)). To invoke the doctrine of res judicata, the moving party must establish that

> (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.

Spangler v. McQuitty, 449 Md. 33, 65 (2016) (quotation marks and citation omitted). The first two elements are at issue in this appeal.

I. THE FIRST ELEMENT IS SATISFIED BECAUSE THE PARTIES WERE THE SAME IN THE FIRST AND THIRD COMPLAINTS.

Edward McCawley argues that the trial court erred in applying res judicata because the parties are not the same in this case and the 2017 case. He argues that in 2017, he sued Ms. Burke individually, but that in 2020, he sued her as Trustee of the Family Trust. Ms. Burke, on the other hand, argues that the substance and effect of Edward McCawley's 2017 complaint were to sue Ms. Burke in her capacity as Trustee of the Family Trust.

"Privity in the res judicata sense generally involves a person so identified in interest with another that he represents the same legal right." *FWB Bank v. Richman*, 354 Md. 472, 498 (1999) (quotation marks and citations omitted). *See deLeon v. Slear*, 328 Md. 569, 587 (1992) (holding that, for res judicata purposes, defendant nurses were in privity with the hospital that employed them by virtue of their employment relationship); *Proctor v. Wells Fargo Bank, N.A.*, 289 F. Supp. 3d 676, 683 (D. Md. 2018) (noting that when a Substitute Trustee prosecutes a foreclosure action on behalf of the lender, "the servicer, lender, and [S]ubstitute [T]rustee share the same right to foreclose on the [subject] mortgage, such that the privity component of claim preclusion is satisfied") (quotation marks and citation omitted).

Although Edward McCawley titled his first complaint in 2017 against Ms. Burke individually, the allegations throughout the first complaint were directed at Ms. Burke's alleged wrongdoing as Trustee. The circuit court, in its oral ruling, specifically rejected Edward McCawley's complaint of wrongdoing by Ms. Burke whether he was suing her

in her individual capacity or in her capacity as Trustee of either trust. Moreover, even if it is true that Edward McCawley was unaware of the Family Trust when he filed his complaint, he became aware of the second trust and was provided a copy of it before trial began. Accordingly, the parties in both cases are the same, and the first element is satisfied.

II. THE SECOND ELEMENT IS SATISFIED BECAUSE EDWARD MCCAWLEY DID NOT RAISE A NEW CLAIM IN THE 2020 COMPLAINT.

Edward McCawley argues that the trial court erred in applying res judicata because the claims are not identical in this case and the 2017 case. He argues that in the 2017 case, the circuit court never determined whether Ms. Burke acted properly or should be removed as Trustee of the Family Trust, which is the focus of his 2020 complaint, because he was unaware that the Family Trust existed when he filed his 2017 complaint. In contrast, Ms. Burke argues that the claims in all three of Edward McCawley's cases are identical and, in all three, Edward McCawley seeks to remove Ms. Burke as Trustee of the Family Trust and to restore Margaret McCawley's "estate plan to the plan established prior to her incapacity."

When a prior court has entered final judgment on a matter sought to be litigated in a second court, analyzing the second element of res judicata "is usually uncomplicated." *Anne Arundel Cnty. Bd. of Educ. v. Norville*, 390 Md. 93, 108 (2005) (citation omitted). When a court has not ruled upon a matter directly, however, the analysis becomes more complex, "for then the second court must determine whether the matter currently before it

was fairly included within the claim or action that was before the earlier court and could have been resolved in that court." *Id.* (quotation marks and citation omitted).

Maryland has adopted the "transactional test" to determine similarity of claims, which asks whether the claims arise "from the same transaction or series of transactions." *Id.* at 106. The Supreme Court of Maryland has described this test as follows:

> What factual grouping constitutes a "transaction" and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Id. at 108-09 (some quotation marks and citations omitted). Under this test, if the two complaints are based "upon the same set of facts and one would expect them to be tried together ordinarily," then "res judicata generally prevents the application of a different legal theory to that same set of facts, assuming that the second theory of liability existed when the first action was litigated." *Id.* at 109, 111 (quotation marks and citation omitted). "Legal theories may not be divided and presented in piecemeal fashion in order to advance them in separate actions." *Id.* at 109.

The allegations underlying Edward McCawley's 2017 complaint are the same as those raised in the 2020 complaint: that Ms. Burke, as Trustee of trusts created by the McCawleys, has been uncooperative; withheld trust assets from Edward McCawley; failed to file reports; and breached her fiduciary duties as attorney-in-fact under Margaret McCawley's durable power of attorney by not changing the terms of the trust to reflect Margaret McCawley's wishes under the original terms of the trusts. Edward McCawley

has not provided this Court with the trial transcripts for the 2017 case, but we do have the record of the circuit court's oral ruling in that case. Central to that ruling were the circumstances surrounding the creation and amendments to both trusts under the terms of the trusts and Margaret McCawley's durable power of attorney as well as Ms. Burke's actions under both trusts. In the present case, Edward McCawley asked the circuit court to evaluate these same circumstances and actions.

Also, although it may be true that Edward McCawley was unaware of the Family Trust when he filed his first complaint in 2017, he certainly became aware of it and was provided a copy of that trust before the trial on the merits in that first case. Therefore, Edward McCawley's theory that Ms. Burke was liable as Trustee of the Family Trust existed at the time of trial for the first case.

Edward McCawley further argues that his 2020 complaint included a "new" cause of action, *i.e.*, removal of Ms. Burke as Trustee for various breaches of fiduciary duties. We disagree. This was not a new claim. Although Edward McCawley did not specifically seek to have Ms. Burke removed as Trustee in the first case, he did allege many failures on her part as Trustee, and he asked the court to assign a person to provide a full accounting of the trust assets if Ms. Burke did not do so. Also, again, although the 2017 complaint does not mention the Family Trust, Edward McCawley became aware of that trust before the case went to trial, and evidence relating to the Family Trust was presented at trial.

Additionally, because the factual basis underlying Edward McCawley's request to remove Ms. Burke in the present case is the same as the factual basis underlying his 2017

case, Edward McCawley could have specifically raised the removal of Ms. Burke as Trustee in the first case. One would expect Edward McCawley to have requested and litigated all possible kinds of relief in a single case, and such requests would form a convenient trial unit given the shared underlying facts. *See Norville*, 390 Md. at 108-09. Although Edward McCawley sought and was denied leave to amend the first complaint to bring the claims against Ms. Burke in her capacity as Trustee, "[d]enial of leave to amend constitutes res judicata on the merits of the claims which were the subject of the proposed amended pleading." *Gonsalves v. Bingel*, 194 Md. App. 695, 716 (2010) (quoting *King v. Hoover Grp., Inc.*, 958 F.2d 219, 222-23 (8th Cir. 1992)). Therefore, the court's denial of Edward McCawley's motion for leave to amend his first petition to remove Ms. Burke as Trustee is not a procedural bar that affects the application of res judicata. Edward McCawley had the right to appeal the first case, including the denial of his leave to amend, but he chose not to.

Under the circumstances presented, Edward McCawley cannot avoid res judicata by applying a "new" legal theory to the same set of facts. *See Heit v. Stansbury*, 215 Md. App. 550, 566 (2013) ("*[R]es judicata* applies even though the subsequent suit takes a different form or is based on a different cause of action.") (quotation marks and citation omitted); *Esslinger v. Baltimore City*, 95 Md. App. 607, 619 (1993) ("[A] plaintiff may not relitigate a claim for relief by switching legal theories.") (quotation marks and citation omitted). "To avoid . . . res judicata's preclusive effect, a party must assert all the legal theories he wishes to in his initial action, because failure to do so does not

deprive the ensuing judgment of its effect as res judicata." *Colandrea*, 361 Md. at 392 (citation and emphasis omitted).

Accordingly, we hold that the circuit court did not err in ruling that this case is barred by res judicata. We shall affirm the circuit court's judgment.

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