2018 IL App (1st) 172076-U

No. 1-17-2076

Order filed on November 6, 2018.

Second Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

GABRIELLA HEREDIA,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 2017 L 000111
	)	
RUSH UNIVERSITY MEDICAL CENTER, a corporation,	)	
	)	
	)	
Defendant-Appellant,	)	The Honorable
	)	John H. Ehrlich,
(Vivek Mishra, M.D.; Sudheer Paruchuri, M.D.; and Affiliated Radiologists, S.C., a corporation, Defendants).	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Justices Pucinski and Hyman concurred in the judgment.

ORDER

¶ 1 *Held:* The involuntary dismissal of plaintiff's hematology counts constituted a final adjudication on the merits of those counts, but it did not likewise constitute a final adjudication on the merits of plaintiff's remaining radiology counts for purposes of *res judicata* because no identity of parties exists. We affirm.

¶ 2 This interlocutory appeal arises out of two separate cases brought against defendant Rush

University Medical Center (Rush) under a theory of vicarious liability for negligent medical treatment provided by radiologists and hematologists at Rush. In 2010, plaintiff Gabriella Heredia filed a complaint (2010 L 014820) against the radiologists and Rush. In 2013, she filed a complaint (2013 L 004302) against the hematologists and Rush.

¶ 3 In July 2013, the circuit court consolidated the two cases pursuant to section 2-1006 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1006 (West 2012)).[1] Shortly thereafter, the court dismissed the 2013 hematology complaint with prejudice (November 20, 2013, order), as untimely filed. 735 ILCS 5/2-619(a)(5) (West 2012). The court denied plaintiff's motion to reconsider the dismissal and she appealed. The proceedings before the circuit court as to plaintiff's radiology claims were not stayed.

¶ 4 In January 2014, plaintiff amended the original 2010 complaint, incorporating the existing radiology counts (I through IV), as well as the hematology counts that were pleaded in the 2013 complaint (V through VIII). In July 2015, we affirmed the dismissal of the 2013 complaint (*Heredia*, 2015 IL App (1st) 141952). In light of our ruling, Rush moved to dismiss plaintiff's 2010 amended complaint in its entirety, asserting that the hematology counts were barred by *res judicata* and that the radiology counts were precluded by the rule against claim-splitting. 735 ILCS 5/2-619(a)(4) (West 2014); see Restatement (Second) of Judgments § 24 (1982). The circuit court granted Rush's motion to dismiss the hematology counts, but denied its motion to dismiss the radiology counts (December 21, 2015, order).

¶ 5 Ultimately, plaintiff voluntarily dismissed the 2010 amended complaint containing the

[1]We note that based on the parties' briefs, as well as this court's opinion in *Heredia v. O'Brien*, 2015 IL App (1st) 141952, plaintiff's two cases apparently were not merged when they were consolidated, meaning, each case retained its independent identity. See *Vitale v. Dorgan*, 25 Ill. App. 3d 941, 944 (1975); *Dowe v. Birmingham Steel Corp.*, 2011 IL App (1st) 091997, ¶ 21 (where the actions involve an inquiry into the same event in its general aspects, the cases may be tried together, but with separate docket entries, verdicts and judgments, the consolidation is simply limited to the joint trial and the actions do not merge).

remaining radiology counts, without prejudice (October 11, 2016, order). 735 ILCS 5/2-1009(a) (West 2016). When she refiled those counts, Rush moved to dismiss on the basis of *res judicata* and claim-splitting. 735 ILCS 5/2-619(a)(4) (West 2016); see Restatement (Second) of Judgments § 24 (1982). The court denied Rush's motion, but granted its motion for certification pursuant to Illinois Supreme Court Rule 308 (eff. July 1, 2017). The court then issued the following certified question:

> "Whether the involuntary dismissal of the plaintiff's counts against an institutional defendant and its hematologists constitutes a final adjudication on the merits for purposes of *res judicata* and claim splitting to bar her remaining counts against the same institutional defendant and its alleged radiologists that she subsequently voluntarily dismissed and then re-filed?"

¶ 6 ANALYSIS

¶ 7 Defendant asserts that the involuntary dismissal of plaintiff's hematology counts, which was affirmed by this court, was a final and appealable order. Defendant therefore asserts that the involuntary dismissal operated as a final adjudication on the merits for purposes of *res judicata* to bar plaintiff's radiology counts that she voluntarily dismissed and subsequently refiled. As this is an interlocutory appeal brought pursuant to Rule 308, our review is strictly limited to the certified question presented to the court and, as with all questions of law, is subject to *de novo* review. *Spears v. Association of Illinois Electric Cooperatives*, 2013 IL App (4th) 120289, ¶ 15.

¶ 8 Pursuant to Illinois Supreme Court Rule 273 (eff. Sept. 1, 2018), "[u]nless the order of dismissal or a statute of this State otherwise specifies, an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits." Accordingly, for purposes of

Rule 273, if the circuit court involuntarily dismisses a plaintiff's action, other than for one of the rule's three exceptions, the dismissal is deemed to be on the merits. See *Richter v. Prairie Farms Dairy, Inc.*, 2016 IL 119518, ¶ 24.

¶ 9 The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the *same parties* or their privies on the same cause of action. (Emphasis added.) *Piagentini v. Ford Motor Co.*, 387 Ill. App. 3d 887, 890 (2009). "*Res judicata* is an equitable doctrine that is designed to prevent a multiplicity of lawsuits between the same parties where the facts and issues are the same." *Id*. For *res judicata* to apply, three requirements must be satisfied: (1) a final judgment on the merits by a court of competent jurisdiction; (2) an identity of a cause of action; and (3) an identity of the parties or their privies. *Hudson v. City of Chicago*, 228 Ill. 2d 462, 470 (2008). If an element is not satisfied, *res judicata* does not apply. *Id*.

¶ 10 With respect to the third requirement, where a defendant is a party to an action based upon vicarious liability, his identity merges with that of the defendant whose conduct he is being held liable. See *Downing v. Chicago Transit Authority*, 162 Ill. 2d 70, 74 (1994). "For vicarious liability claims, the employer and employee are one and the same defendant and the liability of the master and servant for the acts of the servant is deemed that of one tortfeasor and is a consolidated or unified one." (Internal quotation marks omitted.) *Id.* (citing *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 124 (1978)).

¶ 11 Here, the involuntary dismissal of plaintiff's hematology counts constituted a final adjudication on the merits of those counts because none of the exceptions under Rule 273 applied. See Ill. S. Ct. R. 273 (eff. Sept. 1, 2018). Furthermore, the dismissal was a final

adjudication on the merits because, as stated, we affirmed that judgment. See *Heredia*, 2015 IL App (1st) 141952.

¶ 12 That said, the involuntary dismissal of the hematology counts did not constitute a final adjudication on the merits of plaintiff's radiology counts for purposes of *res judicata* because no identity of parties exists. Namely, plaintiff's 2013 complaint was pleaded against the hematologists and Rush as their apparent principal, while her 2010 complaint was pleaded against the radiologists and Rush as their apparent principal. To the extent Rush argues that because it was a party to both actions and thus an identity of parties exists, this argument ignores that Rush's capacity as a defendant to each action was based solely upon vicarious liability. Therefore, Rush's identity merged with that of the hematologists and radiologists respectively. Stated differently, in the 2013 complaint, Rush and the hematologists were considered to be one defendant, whereas in the 2010 complaint, Rush and the radiologists were considered to be one defendant. Accordingly, no identity of parties exists.

¶ 13 Because Rush has failed to satisfy the third element of *res judicata*, we need not proceed further in our analysis. Accordingly, the involuntary dismissal of plaintiff's hematology counts does not bar her remaining radiology counts under *res judicata*.

¶ 14 CONCLUSION

¶ 15 In sum, we answer the certified question in the negative. In so ruling, this court has limited itself to the question certified. We make no determination as to the propriety of plaintiff's cause of action or the circuit court's denial of Rush's motion to dismiss.

¶ 16 Affirmed.