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2018 IL App (3d) 160362-U

Order filed January 3, 2018

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

2018

GERALD JONES,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Plaintiff-Appellant,	)	Peoria County, Illinois.
	)	
v.	)	
	)	
CHRISTOPHER HIGGERSON; JOANNE	)	
SCHER; KELLY DAVIDSON; JASON	)	Appeal No. 3-16-0362
BROCKETT; ZACHARY BUCHENAU;	)	Circuit No. 15-MR-228
CHAD TRANCHANT; AMANDA JONES;	)	
DOUGLAS BROWN; RANDY PFISTER;	)	
HELEN HAMILTON; and ILLININOIS	)	
DEPARTMENT OF CORRECTIONS,	)	Honorable
	)	Katherine Gorman Hubler,
Defendants-Appellees.	)	Judge, presiding.

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PRESIDING JUSTICE CARTER delivered the judgment of the court.  
Justices O'Brien and Wright concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Plaintiff's claims were properly dismissed by the circuit court under the doctrines of *res judicata* and collateral estoppel.

¶ 2 Plaintiff, Gerald Jones, brought various claims against defendants, Christopher Higgeson, Joanne Scher, Kelly Davidson, Jason Brockett, Zachary Buchenau, Chad Tranchant,

Amanda Jones, Douglas Brown, Randy Pfister, Helen Hamilton, and the Illinois Department of Corrections (IDOC). The circuit court dismissed Jones’s claims under the principles of *res judicata* and collateral estoppel. Jones filed a motion for reconsideration, which the circuit court denied. Jones appeals, arguing the trial court erred in dismissing his claims under the principles of *res judicata* and collateral estoppel. We affirm the circuit court’s dismissal of Jones’s claims.

¶ 3

## FACTS

¶ 4

### A. Federal Suit

¶ 5

Jones is an inmate of the Pontiac Correctional Center. On December 5, 2011, Jones filed a *pro se* lawsuit in federal court pursuant to 42 U.S.C. § 1983 (2012), in which he claimed that his constitutional rights were violated at the Pontiac Correctional Center. In the federal action, Jones sought damages and named 15 defendants in the caption and additional defendants in the body of his complaint, in both their individual and official capacities—Patrick Quinn (former governor of Illinois), the Illinois Department of Corrections (IDOC), and various employees of IDOC—including defendants in this matter, Brockett, Buchenau, Tranchant, Amanda Jones, Brown, Pfister, and Hamilton. Jones’s federal action mainly stemmed from allegations that he had been assaulted by prison staff, including being kicked, pushed, and slammed into the ground by Brockett on November 14, 2011. Jones claimed he had been assaulted six times by prison officials and that the assaults were becoming increasingly worse. He complained of resulting head, neck, hand, and eye pain from the assaults. In addition to the allegations of assault, Jones claimed defendants retaliated against him for filing grievances and attempting to press criminal charges against prison staff, with Jones indicating that he was the subject of assaults, harassment, and threats and that he had been denied medical care by medical technician Brown after the assault on November 14, 2011. Jones further alleged that defendants refused him the ability to

file and exhaust grievances, denied him meals, took away his mattress, and threw away his property. He also alleged that defendants conspired to deny him his constitutional rights by concealing staff misconduct and acting under a code of silence.

¶ 6 Upon a preliminary merit review of Jones’s federal claims, the district court found that because Jones had accumulated three strikes in the federal court system as the result of filing two prior actions that failed to state a claim and an appeal that was deemed frivolous, Jones could only proceed if his current federal claims sufficiently alleged that he was under imminent danger of serious physical injury. The federal district court found Jones had stated a claim for excessive force against defendants Brockett and Buchenau; an arguable constitutional claim under the Eighth Amendment against Brockett and Brown for their failure to obtain medical treatment for Jones after the alleged assault on November 14, 2011; a claim against some of the defendants for their failure to intervene while Brockett assaulted Jones; a claim for retaliation against Brockett; and a claim against Brockett for hate crime (720 ILCS 5/12-7.1 (West 2010)).

¶ 7 The district court found that Jones’s allegations against defendants were insufficient to state a claim for conspiracy to deny Jones his constitutional rights. The district court also dismissed some defendants, including Governor Patrick Quinn, Pfister, and IDOC, because Jones either failed to state a claim against them or they were improper defendants. The federal district court declined to exercise supplemental jurisdiction over Jones’s state law claims stemming from alleged violations of Illinois criminal statutes because those claims did not provide for a private right of action. The district court further found that IDOC was not a proper defendant because it was not a “person” for the purpose of a section 1983 action and IDOC was immune from suit.

¶ 8 Prior to his jury trial in federal court, Jones filed a motion to compel the production of video camera evidence, which was denied. On September 10, 2014, prior to his jury trial in

federal court, Jones filed a “motion for sanctions against all defendants and attorneys for discrimination or concealment of evidence.” The district court denied Jones’s motion for sanctions but indicated that Jones “will be allowed to examine witnesses and their knowledge of [the] videos.”

¶ 9 On September 29, 2014, a jury trial took place on Jones’s federal action. After Jones presented his evidence, the defendants made an oral motion for a judgment as a matter of law. The district court granted the motion in part, and denied the motion in part, finding that Jones’s claim for deliberate indifference to a serious medical need against Brown was frivolous and that Jones had failed to establish his claim of failure to intervene as to defendants Amanda Jones, Hamilton, and Trachant. The district court also found that the only remaining matter to go to the jury was Jones’s claim of excessive force against Buchenau and Brockett. The jury returned a verdict in favor of defendants, Buchenau and Brockett.

¶ 10 On October 3, 2014, Jones filed a posttrial motion for a new trial and a “motion for sanctions against all defendants and attorneys for destruction or concealment of evidence.” In his motion for new trial, Jones claimed bias on the part of the judge and jury and claimed that defendants’ witnesses perjured themselves, arguing that he established his case and he believed the jury’s finding against him was the result of defendants’ untruthful testimony. In his motion for sanctions, Jones argued that defendants had deliberately destroyed evidence necessary for him to prove his case and had induced their witness, Lieutenant Kelly Davidson, to commit perjury by testifying no videos of the alleged attacks existed because there were no cameras in the two subject areas where the assaults had allegedly taken place. The district court noted that in the motion for sanctions, Jones had:

“reallege[d] his oft repeated claim that defendants failed to turn over videotape evidence. This, despite the fact that [an officer] of Internal Affairs testified that there were no video cameras in the two areas where the alleged assault of [Jones] occurred.”

¶ 11 The district court denied both of Jones’s posttrial motions. Jones filed a notice of appeal, but the appeal was dismissed due to Jones’s failure to pay the docketing fee.

¶ 12 B. State Court Complaint

¶ 13 On April 20, 2015, Jones filed a *pro se* complaint in State court against many of the defendants named in his federal case, as well as against the two assistant attorney generals who represented the defendants in the federal case—Christopher Higgerson and Joanne Scher—and against internal affairs officer, Kelly Davidson, who had testified that no cameras existed where the assaults allegedly took place. Jones alleged six causes of actions against defendants: (1) negligent and intentional spoliation of evidence; (2) tortious interference with a prospective economic advantage; (3) criminal acts of hate crimes, mob action, and official misconduct; (4) legal malpractice against Higgerson and Scher; (5) intentional infliction of emotional distress; and (6) fraudulent concealment or misrepresentation of evidence. In the complaint, Jones alleged that the named defendants conspired in his federal action against him due to his race by breaching their duty to preserve the security camera evidence of the alleged incidents and the medical records of his injuries from the alleged assaults and by failing to expose Davidson’s false testimony in his federal case.

¶ 14 In support of his claims, Jones alleged that he had placed certain named defendants on notice that “the video camera evidence” was needed in his federal suit to support his allegations of being assaulted by Brocket and Buchenau. Jones also alleged that he had requested the video

camera evidence for each incident in a timely manner, during the grievance review process and prior to the filing of his federal action, but defendants failed and refused to review the video camera evidence in breach of “their state employment duties owed to [him].” Jones alleged that “from the very moment” force was used on him, defendants had a duty to preserve the incident reports in a legal file for future litigation pursuant to IDOC policies. Jones alleged that as a result of defendants’ failure to preserve the video camera evidence, it was destroyed.

¶ 15 In the complaint, Jones further alleged that during discovery in his federal case, he had requested that defendants produce the video camera evidence from both alleged assaults and he filed “three to about five motions to compel” them to do so. Jones alleged that in response to his discovery requests and his motions to compel, defendants indicated “no video camera evidence or footage exists or was preserved because [Jones] did not place them on notice in time before it was destroyed.” Defendants’ attorney also informed the court that a witness from internal affairs would be testifying at trial to further explain the reason the video camera evidence did not exist or was not available. Jones also alleged that he had filed a motion for a spoliation of evidence jury instruction to be given as a sanction for defendant’s failure to preserve the video camera evidence, which was denied by the district court.

¶ 16 Jones alleged that defendants had “conspired” and made “misrepresentations” to the district court about the availability of the video camera evidence by having Lieutenant Kelly Davidson testify at trial that the reason no video camera evidence or footage existed was because there were no video cameras in the area where the two alleged incidents supposedly took place. Jones alleged that “all defendants” knew that Davidson gave false testimony, failed to correct Davidson’s false testimony, and conspired to coach Davison to testify.

¶ 17 Jones further claimed that some defendants had refused to testify to witnessing the assault of November 14, 2011, and, instead, withheld information by falsely testifying that they had not witnessed anything regarding the alleged incident. Jones claimed that Brockett testified to holding Jones down on a bench on November 14, 2011, but claimed that he did not assault Jones. Jones argued Brockett's testimony impeached the testimony of those defendants who had testified that nothing had happened on November 14, 2011. Jones claimed he suffered cuts, bleeding abrasions, and pain as a result of Brockett's assault on him and Hamilton had called medical staff to report the incident. In response to Hamilton's call, medical technician Brown evaluated Jones but Brown failed to preserve documentation of his medical treatment of Jones. Jones alleged that Brown had testified that he could not recall treating Jones on November 14, 2011, and due to Brown's failure and refusal to preserve documentation of his treatment of Jones's injuries, Jones lost his suit in federal court. Jones also alleged that the incident testified to by Brockett on November 14, 2011, occurred when Jones was being escorted to a front gallery entrance, which would have been captured by video cameras.

¶ 18 Jones additionally alleged that Buchenau testified falsely about an incident that occurred on August 20, 2011, by indicating that he used force on Jones because Jones had tried to kick him and was combative, resulting in Buchenau and Jones being on the ground. Jones indicated that Buchenau punched and choked him (used excessive force) and the alleged incident of August 20, 2011, took place near a gallery entrance, which would have been captured by video cameras.

¶ 19 Jones claimed Brockett and Buchenau conspired with the other named defendants to conceal, destroy, and fail to preserve the video camera evidence of the alleged incidents. Jones alleged that the video camera evidence was necessary to prove his allegations of the assaults and

to prove that the assaults on him were not justified. Jones also alleged that defendants in the federal case did not testify truthfully as to the extent of his injuries or the amount of excessive force that was used against him. Jones alleged that defendants breached their employment policies by failing to preserve the relevant video camera evidence of both incidents, failing to preserve documentation of medical records, failing to notify the court and the jury that Davidson testified falsely, and failing to review or produce the video camera evidence.

¶ 20 Jones attached various documents to his complaint: the docket entry in his federal case denying his motion for sanctions and for a new trial, which referenced his “oft repeated claim that defendants failed to turn over video tape evidence”; three documents regarding IDOC procedures for investigating and reporting employee misconduct; and a disciplinary decision against Jones (referenced as “exhibit 71”) for an incident on that took place April 23, 2012. The disciplinary decision referenced an incident involving Brockett and defendant that occurred in “west house,” with the hearing committee finding Jones not guilty of “damage or misuse of property” because “after attempting to review the security camera footage, th[e] incident was not clear enough to make a determination.”<sup>1</sup> Jones argued that his claim that defendants had knowingly breached their duty to ensure that witnesses testify truthfully was proven by the attached disciplinary decision that admitted the existence of security cameras, with Jones contending that the evidence showed “pursuant to exhibit 71” that defendants knew that Davidson testified falsely (about no video cameras being in the areas where the alleged incidents occurred). Jones filed a memorandum of law in support of his complaint regarding defendants’ duty to preserve the video footage and medical records and their duty to ensure their witnesses testified truthfully.

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<sup>1</sup>The disciplinary decision shows that the hearing committee found Jones guilty of disobeying a direct order based on Brockett’s report that Jones refused to obey two direct orders to Jones to remove the sheet that Jones had tied around his neck and tied to the upper bar of his bunk bed.



¶ 21

### C. Defendants' Motion to Dismiss

¶ 22

The served defendants—Higgerson, Davidson, Brockett, Brown, Amanda Jones, Pfister, and IDOC—through their attorney (the Attorney General of Illinois), moved to dismiss Jones's complaint. In a memorandum in support of their motion to dismiss, defendants argued that when Jones had requested the video footage from both incidents in discovery in the federal suit, defendants stated no video for the date of the incident was available because Jones did not request the video prior to the time of its scheduled destruction. Defendants also indicated that in response to Jones's motion to compel, defendants had stated that no cameras existed in the area in question. Defendants argued that Jones's claims that defendants committed perjury or suborned perjury in the federal case was not a recognized cause of action. Defendants also argued that Jones failed to plead sufficient facts to support his contention that defendants had a duty to preserve evidence. Defendants additionally argued that Jones's claims were barred by *res judicata*, collateral estoppel, and sovereign immunity.

¶ 23

In response, Jones argued that he sufficiently alleged a claim for spoliation of evidence because he had alleged defendants knew or should have known that the evidence was material and relevant to a potential civil action, which Jones contended was evident by the fact that defendants had voluntarily preserved the relevant incident reports in a legal storage file for a suspected potential civil action but failed to preserved the relevant video camera evidence. Jones contended that his claims were not barred by *res judicata* and collateral estoppel because: he could not bring any claims in federal court other than those indicating imminent danger of serious physical injuries; the issues in the two cases were not the same; the district court had refused his request for a spoliation of evidence jury instruction; and he had to lose his federal lawsuit before he could bring a spoliation of evidence claim in State court. Jones further

contended that defendants do not have sovereign immunity against his claims in this case because defendants acted beyond the scope of their state employment when performing illegal acts, committing hate crimes, committing bias or racist acts, or obstructing justice. Jones also claimed defendants were not entitled to sovereign immunity because they were acting in their individual capacities when they committed acts of conspiracy and obstruction of justice.

¶ 24 On November 12, 2015, the circuit court entered an order dismissing Jones’s complaint “under principles of *res judicata* and collateral estoppel, based on Federal case number 2011-cv-1445.” Jones filed a motion for reconsideration, arguing that his current State court claims for legal malpractice, spoliation of evidence, and tortious interference were not part of his federal case. He also contended that the federal court had only addressed his claims that demonstrated that he was under imminent danger of serious physical harm, and the principles of *res judicata* and collateral estoppel did not bar his claims. The circuit court denied Jones’s motion for reconsideration. Jones appealed.

¶ 25 ANALYSIS

¶ 26 On appeal, Jones argues the trial court erred by dismissing his claims. Jones also argues that his spoliation of evidence claim regarding video from security cameras and the medical technician’s failure to create or preserve treatment notes was not addressed on the merits in his federal case where the district court had denied his request for a jury instruction on spoliation of evidence. Jones further argues that he lost his excessive force case in federal court because he was unable to prove the claim due to defendants’ fraudulent misrepresentation and concealment of the video evidence. He also contends that his claims of legal malpractice and tortious interference were not addressed on the merits in his federal case because those claims did not accrue until the date of the adverse ruling in the federal case.

¶ 27 Defendants argue that Jones’s complaint was properly dismissed. Defendants claim that Jones forfeited his claims based on their violations of certain criminal statutes, intentional infliction of emotional distress, and fraudulent concealment because Jones failed to develop those arguments on appeal. Defendants also contend that Jones’s claims for damages against IDOC or state employees in their official capacities were properly dismissed as those claims were barred by sovereign immunity. As to Jones’s remaining claims against defendants in their individual capacities, defendants argue Jones failed to state a claim for relief regarding spoliation of evidence, legal malpractice, and tortious interference with a prospective economic advantage. Defendants also argue that the doctrines of *res judicata* and collateral estoppel bar all of Jones’s claims.

¶ 28 As an initial matter, we agree that Jones has forfeited his claims based on the defendants’ alleged violations of criminal statutes, his claim of intentional infliction of emotional distress, and his claim of fraudulent concealment because he failed to develop these arguments in his brief on appeal. *Ramos v. Kewanee Hospital*, 2013 IL App (3d) 120001, ¶ 37 (the appellate court is not a repository into which an appellant may foist the burden of argument and research); Ill. S. Ct. R. 341(h)(7) (eff. Nov. 1, 2017) (“[p]oints not argued are waived” on appeal and the failure to properly develop an argument and support it with citation to relevant authority results in forfeiture of that argument). We, therefore, examine whether the trial court erred in dismissing Jones’s remaining claims on appeal—negligent and intentional spoliation of evidence, tortious interference with a prospective economic advantage, and legal malpractice by Higgerson and Scher.

¶ 29 A. Standard of Review

¶ 30 A motion to dismiss made under section 2-615 of the Code of Civil Procedure (Code) (735 ILCS 5/2-615 (West 2016)) challenges the legal sufficiency of a complaint. *Bjork v. O'Meara*, 2013 IL 114044, ¶ 21. Under section 2-615 of the Code, we accept as true all well-pleaded facts contained within the complaint, along with the reasonable inferences, and view those facts in the light most favorable to the plaintiff. *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 19. A motion to dismiss pursuant to section 2-619 of the Code (735 ILCS 5/2-619 (West 2016)) admits the legal sufficiency of the complaint but asserts that an affirmative defense defeats the complaint. *Patrick Engineering, Inc. v. City of Naperville*, 2012 IL 113148, ¶ 31. Under section 2-619, we also accept all well-pleaded facts as true, with reasonable inferences that can be drawn from those facts, viewed in the light most favorable to the nonmoving party. *Wofford v. Tracy*, 2015 IL App (2d) 141220, ¶ 27. In this case, defendants' moved to dismiss Jones's complaint pursuant to both section 2-615 and section 2-619 of the Code. Our review of the trial court's dismissal of the complaint is *de novo* under either section 2-615 or section 2-619. *Id.* ¶ 31. We also note that we can affirm the circuit court's ruling on any basis supported by the record. *Cwik v. Giannoulis*, 237 Ill. 2d 409, 424 (2010).

¶ 31 B. Spoliation of Evidence

¶ 32 Jones cannot proceed on his claim of intentional spoliation of evidence because Illinois courts have not adopted a separate cause of action for intentional spoliation of evidence. *Wofford*, 2015 IL App (2d) 141220, ¶ 41. Therefore, Jones's intentional spoliation of evidence claim was properly dismissed.

¶ 33 We now turn to Jones's negligent spoliation of evidence claim. The Illinois Supreme court has declined to recognize spoliation of evidence as an independent tort but has held that a spoliation claim could be stated under existing negligence principles. *Boyd v. Travelers*

*Insurance Co.*, 166 Ill. 2d 188, 192-94 (1995). To state a cause of action for negligence, a plaintiff must plead the existence of a duty owed by defendant to plaintiff, a breach of that duty, an injury proximately caused by the breach, and damages. *Id.* at 193-94. Generally, there is no duty to preserve evidence, but a duty to preserve evidence may arise through an agreement, a contract, a statute, or another special circumstance. *Id.* at 195. Under any of those circumstances, a defendant owes a duty of care to preserve evidence if a reasonable person in the defendant's position should have foreseen the evidence would be material to a potential civil action. *Id.* In a negligence action involving the loss or destruction of evidence, a plaintiff must allege sufficient facts to support a claim that the loss or destruction of the evidence caused the plaintiff to be unable to prove an underlying lawsuit. *Id.* at 196. In alleging actual damages, the plaintiff must allege that the defendant's loss or destruction of the evidence caused the plaintiff to be unable to prove an otherwise valid underlying cause of action. *Id.* at 197.

¶ 34 A prior judgment may have a preclusive effect in a later action under principles of both *res judicata* and collateral estoppel. *Nowak v. St. Rita High School*, 197 Ill. 2d 381, 389 (2001). Under the doctrine of *res judicata*, a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and serves as an absolute bar to a subsequent action involving the same claim, demand, or cause of action. *Id.* When *res judicata* is established to bar a second action between the parties upon the same claim or demand it is conclusive as to every matter that was offered to sustain or defeat the claim or demand and as to any other matter which might have been offered for that purpose. *Id.* Separate claims are considered to be the "same cause of action" for purposes of *res judicata* if the claims arise from a single group of operative facts. *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 22.

¶ 35 To establish that the doctrine of *res judicata* is applicable to a claim, demand, or cause of action, three requirements must be satisfied: (1) there is a final judgment on the merits rendered by a court of competent jurisdiction, (2) there is an identity of cause of action, and (3) there is an identity of parties or their privities. *Nowak*, 197 Ill. 2d at 390. The dismissal of a complaint for the failure to state a claim is an adjudication on the merits, while a dismissal for lack of subject matter jurisdiction is not considered a decision on the merits of the complaint. *Id.* *Res judicata* will not be applied if it is fundamentally unfair to do so. *Id.*

¶ 36 The doctrine of collateral estoppel applies when a party, or someone in privity with a party, participates in two separate and consecutive cases arising on different causes of action and some controlling fact or question material to the determination of both causes had been adjudicated against that party in the former suit by a court of competent jurisdiction. *Id.* at 389-90. The adjudication of the fact or question in the first cause is conclusive of the same question in the later suit as an estoppel as to the point or question actually litigated and determined, but not as to other matters which might have been litigated and determined. *Id.* at 390.

¶ 37 To establish that collateral estoppel is applicable to a claim, it must be established that: (1) the issue decided in the prior adjudication is identical to the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom the estoppel is asserted was party or in privity with a party to the prior adjudication. *Id.* Collateral estoppel must not be applied to preclude parties from presenting their claims or defenses unless it is clear that no unfairness would result to the party being estopped. *Id.* at 391. A court must balance the need to limit litigation against the right to a fair adversary proceeding where a party may fully present his case when determining whether to

apply the doctrine of collateral estoppel, while examining the elements that comprise the practical realities of litigation. *Id.*

¶ 38 In this case, Jones pled that he sustained injuries when he was assaulted by Brockett and Buchenau without justification, alleging facts that gave rise to his underlying federal lawsuit for excessive force. Jones also alleged that he suffered the inability to succeed on his otherwise valid excessive force claim without the video footage of the assaults or Brown's medical notes regarding the injuries Jones allegedly suffered as a result of the alleged assaults. Jones alleged that video cameras were in place where the alleged assaults occurred but defendants failed to produce or preserve any resulting video footage from those video cameras. Jones also alleged that defendants had a duty to preserve the video footage and had breached that duty.

¶ 39 Although Jones alleged a claim for spoliation of evidence in this case, the issue of whether the requested video footage or medical records ever existed to give rise to defendants' alleged duty to preserve the evidence was previously decided in his federal case. In his federal action, Jones had brought pretrial and posttrial motions seeking the video footage but those motions were denied. Defendant acknowledges that Brown had testified in federal court that Brown did not recall any incident involving the treatment of Jones on the date in question and had no medical treatment notes indicating any such incident ever occurred and that the internal affairs officer testified there was no relevant video footage because cameras did not exist in the areas where the alleged assaults occurred. Therefore, the district court heard evidence regarding Jones's allegations of defendants destroying or improperly withholding the subject evidence. If the federal court had found that the subject evidence existed or that defendants were responsible for destroying or improperly withholding the subject evidence, Jones's motions to compel and/or motions for sanctions would have succeeded. In fact, the docket sheet from the federal case

indicates that the district court denied Jones's request for sanctions for defendants' alleged destruction or concealment of evidence because the internal affairs officer had testified there were no video cameras in the two areas where alleged assaults of Jones had occurred. Therefore, Jones's allegations, together with the district court's docket sheets, show that Jones had raised the issue of whether the missing evidence existed in his federal action and the district court found the subject evidence did never existed. Consequently, under the principle of *res judicata*, Jones is precluded in the present case from bringing a claim alleging that the subject evidence existed against the defendants of the federal suit and their privies. Under the principle of collateral estoppel, Jones is also precluded from raising the issue in this case because whether the evidence existed was material to the determination of the motions he filed in federal court and is material to his spoliation claim in the present case, and the issue was previously adjudicated against Jones in his federal suit.

¶ 40 C. Legal Malpractice and Tortious Interference

¶ 41 For the same reason noted above, Jones is collaterally estopped from bringing his claims of legal malpractice and tortious interference in this case. As stated above, the district court decided that the subject evidence did not exist, which is dispositive of Jones's legal malpractice and tortious interference claims.

¶ 42 Additionally, to state a claim for legal malpractice, a plaintiff must plead and prove that the defendants of the legal practice action (the attorneys) owed the plaintiff a duty of due care arising from the attorney-client relationship, that the defendants breached that duty, and that as a proximate result of the breach of duty, the plaintiff suffered injury. *In re Estate of Powell*, 2014 IL 115997, ¶ 13. The injury in a legal malpractice action is neither a personal injury nor the attorney's negligent act but, rather, the pecuniary injury to an intangible property interest caused



