IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

GALEN SUPPES,

Appellant,

v.

THE CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,

Respondents.

DOCKET NUMBER WD83509

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: November 17, 2020

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Jeff Harris, Judge

JUDGES

Division One: Chapman, P.J., and Pfeiffer and Thomson, JJ. CONCURRING.

ATTORNEYS

Galen J. Suppes, Columbia, MO, Appellant, *pro se*.

Dale C. Doerhoff, Heidi Doerhoff Vollet, and Shelly A. Kintzel, Jefferson City, MO, Attorneys for Respondents.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

GALEN SUPPES, Appellant,
v.
THE CURATORS OF THE UNIVERSITY OF MISSOURI, et al., Respondents.

WD83509 **Boone County**

Before Division One Judges: Thomas N. Chapman, Presiding Judge, and Mark D. Pfeiffer and W. Douglas Thomson, Judges

Mr. Galen Suppes ("Suppes") appeals from the judgment of the Circuit Court of Boone County, Missouri ("trial court"), granting the motion of The Curators of the University of Missouri ("University") and other University-related defendants to dismiss Suppes's first amended petition on the grounds of *res judicata* and official immunity, and dismissing the petition with prejudice. The trial court also denied Suppes's various motions for leave to amend his first amended petition or to join parties or for injunctive relief.

The lawsuit underlying this appeal is the latest in more than a decade of administrative proceedings and state and federal court litigation between Suppes and the University. In the underlying lawsuit, Suppes raised claims regarding the treatment and ownership of certain inventions and patents, and claims regarding the termination of his employment as professor and related requirement that he obtain prior written permission from the University before coming onto campus.

AFFIRMED.[1]

Division One holds:

1. In Suppes's first point on appeal, he asserts that the trial court erred in dismissing his petition and denying him leave to amend his petition to request injunctive relief from the University's restrictions "barring" him from campus. Suppes did not adequately plead the wrongful and injurious invasion of some legal right, that he had no adequate remedy at law, and that he would suffer irreparable harm. Accordingly, the trial court did not abuse its discretion in denying Suppes leave to amend to add a claim for injunctive relief.

2. In Suppes's second, third, fourth, and fifth points, he asserts that the trial court erred in dismissing Counts I (breach of contract) and II (breach of covenant of good faith and fair dealing) of his first amended petition based on the doctrine of *res judicata*. In points two and three, he contends that there was not identity of parties because the University was not named as

[1] The University's motion to dismiss the appeal for briefing deficiencies is denied.

a defendant in his 2018 federal lawsuit (Point II) or in the dismissal for cause proceeding (Point III). In points four and five, he contends that there was not identity of the thing sued for because the claims in the first amended petition related to events that occurred after the earlier lawsuits. As to Point II, the defendants in Suppes's 2018 federal lawsuit were acting solely as employees and agents of the University within the scope of their employment and the doctrine of *respondeat superior* applies as between them and the University. As to Point III, Suppes appealed the trial court's grant of judgment on the pleadings in favor of the University on Suppes's declaratory judgment and injunctive relief action challenging the University's procedures for dismissal for cause, and this court affirmed the trial court's judgment. *Suppes v. Curators of the Univ. of Mo.*, 529 S.W.3d 825 (Mo. App. W.D. 2017). As to Points IV and V, any claim that Suppes attempts to assert in his 2019 lawsuit is based on the same operative facts as his claim in the University's 2009 Boone County lawsuit, in which he disputed patent ownership. *See Curators of the Univ. of Mo. v. Suppes*, 583 S.W.3d 49 (Mo. App. W.D. 2019).

3. In Suppes's sixth point, he asserts that the trial court erred in dismissing Counts V and VI of his first amended petition based on the doctrine of *res judicata* because the actions of two University employees in restricting his access to campus "occurred later than the timeframe of actions the federal court allowed for consideration." The factual bases for the claims here and in the 2018 federal lawsuit were the same, as the claims in both cases arose out of the same acts or transactions: the University's decision to restrict Suppes's access to campus without prior written permission. The allegations in this case were merely evidentiary details relating to the University's enforcement of its decision to restrict Suppes from campus that did not constitute new ultimate facts. The claims in this case are not new for *res judicata* purposes.

4. In Suppes's seventh point, he asserts that the trial court erred in dismissing Counts III and IV of his first amended petition against certain University-related employees based on *res judicata* because "the federal court dismissal was on different counts in different capacities." While Suppes sued the defendants in their "individual" capacities in the 2018 federal lawsuit but in their "official" capacities in the first amended petition, the status in which they were sued is the same in both actions, and the parties are identical for the purposes of *res judicata*.

5. In Suppes's eighth point, he asserts that the trial court erred in dismissing Counts III (abuse of process), V (intentional infliction of emotional distress), and VI (civil conspiracy) of his first amended petition against University attorneys and employees based on immunity. The University's attorneys brought suit against Suppes in a dispute over the ownership of inventions and patents. Suppes's allegations fall short of supporting any claim that the University's attorneys engaged in any fraud, collusion, or intentional torts such that their conduct would fall within the "exceptional circumstances" rule. Intentional infliction of emotional distress and civil conspiracy are both tort claims, and Suppes failed to plead any facts giving rise to an exception to sovereign immunity.

6. In Suppes's ninth point, he asserts that the trial court erred in denying him leave to file various amended petitions. Suppes's claims in the proposed amended petitions were based on the dismissal for cause proceeding and the termination of his employment by the University and on the 2009 Boone County lawsuit and its judgment, included issues raised in the 2018 federal lawsuit, and would not cure the legal defects in the originally-asserted claims, including *res*

judicata and immunity. The proposed amended pleadings were futile, and the trial court did not abuse its discretion in denying them.

7. In Suppes's tenth and final point, he asserts that the trial court erred in denying him the right to a jury trial under the Seventh Amendment to the United States Constitution. Certain procedural devices, such as *res judicata*, withstand constitutional challenge despite infringing on the right to a jury trial. Furthermore, the Seventh Amendment guarantee to a jury trial does not apply in state courts. Also, the 2009 Boone County lawsuit *was* tried to a jury, and Suppes could have had a jury trial on his counterclaims against the University if he had not dismissed them with prejudice at trial.

Opinion by: Mark D. Pfeiffer, Judge November 17, 2020

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.