MISSOURI COURT OF APPEALS
WESTERN DISTRICT

REVA BELL, et al.,

Appellants,

v.

CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,

Respondents.

DOCKET NUMBER WD83898

Date: April 6, 2021

Appeal from:
Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:
Division One: Alok Ahuja, P.J., Gary D. Witt and Thomas N. Chapman, JJ.

Attorneys:
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Christopher S. Shank, David L. Heinemann, Mission Woods, KS for respondents

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

REVA BELL, et al., Appellants,
v.
CURATORS OF THE UNIVERSITY OF MISSOURI, et al., Respondents.

WD83898 Jackson County

Before Division One Judges: Alok Ahuja, P.J., Gary D. Witt and Thomas N. Chapman, JJ.

Plaintiffs Reva Bell and Domonique Johnson filed a petition for damages in the Circuit Court of Jackson County against the Curators of the University of Missouri and against three faculty members at the University of Missouri-Kansas City (collectively the "University"). Plaintiffs allege that in 2015 they enrolled in a master's degree program in the University of Missouri-Kansas City's School of Education. They contend that, after completing two years of study, the University informed them that their program would take longer to complete than they had originally expected, and that certain of the courses they had completed would no longer count towards their degrees or teacher certification. Plaintiffs allege that the modified program requirements were based on changed education standards adopted by the Missouri Department of Education in 2012 – before the Plaintiffs began their studies. Plaintiffs allege that the University should have informed them of the Department of Education's updated requirements, and the coursework needed to meet those updated requirements, before they made the decision to enroll in the master's degree program. Plaintiffs allege claims for breach of contract, negligence, and under Missouri and Kansas consumer protection laws.

This is the third lawsuit the Plaintiffs have filed against the University asserting similar claims. The first was filed in the Circuit Court of Jackson County, and the second in the District Court of Johnson County, Kansas. Plaintiffs voluntarily dismissed each of the prior lawsuits. The circuit court granted summary judgment to the University in *this* case, on the basis that Plaintiffs' voluntary dismissal of the Kansas lawsuit was treated as a judgment on the merits under the "two-dismissal" rule recognized in Kansas law. The court accordingly held that the present lawsuit was barred by *res judicata* or claim preclusion.

Plaintiffs appeal.

AFFIRMED.

Division One holds:

The question in this appeal concerns the preclusive effect to be given to the disposition of earlier litigation prosecuted in state court in Kansas. Our analysis is accordingly governed by Kansas law.

A Kansas statute governing voluntary dismissals in civil cases provides that, "if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits." K.S.A. § 60-241(a)(1)(B). Because of this "two-dismissal" rule, Plaintiffs' dismissal of their Johnson County, Kansas lawsuit is treated as a disposition on the merits, and has preclusive effect in this case.

Plaintiffs argue that the "two-dismissal" rule should not apply because, after they filed their notice of voluntary dismissal of the Kansas case, the district court in that case entered a dismissal order, which specified that dismissal was "without prejudice." Under Kansas law, however, Plaintiffs' notice of dismissal was immediately effective without order of the court, and the Kansas district court lost jurisdiction to take any further action after the notice of dismissal was filed. Therefore, the Kansas district court's dismissal order cannot affect the preclusive effect which attached to Plaintiffs' voluntary dismissal of the Kansas action under Kansas' "two-dismissal" rule.

Opinion by: Alok Ahuja, Judge April 6, 2021

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