

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

ELDON BUGG,

Appellant,

v.

JAMES L. RUTTER and JEAN S. GOLDSTEIN,

Respondents.

DOCKET NUMBER WD72292

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: December 14, 2010

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Kevin M.J. Crane, Judge

APPELLATE JUDGES

Division Two: Karen King Mitchell, Presiding Judge, and James Edward
Welsh and Mark D. Pfeiffer, Judges

ATTORNEYS

Eldon Bugg
Boonville, MO

Appellant, *pro se*,

Bruce Farmer
Columbia, MO

Attorney for Respondents.



MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

ELDON BUGG,)
)
Appellant,)
v.)
)
JAMES L. RUTTER and JEAN S.)
GOLDSTEIN,)
)
Respondents.)

WD72292

Boone County

Before Division Two Judges: Karen King Mitchell, Presiding Judge, and James Edward Welsh and Mark D. Pfeiffer, Judges

This is a *res judicata* case. The appellant argues that a previous federal judgment did not dispose of his state law claims and that therefore the doctrine of *res judicata* does not bar him from reasserting those same claims here. We disagree.

AFFIRMED.

Division Two holds:

Appellant Eldon Bugg filed a complaint in the United States District Court for the Western District of Missouri (“the district court”) against Respondents James Rutter and Jean Goldstein. Bugg alleged several causes of action under federal law and also alleged several state law claims.

The alleged facts underpinning Bugg’s claims were that Rutter and Goldstein acted improperly in bringing a state action against Bugg and in attempting to enforce the judgment they obtained in that action by seeking the court’s order of contempt.

Rutter and Goldstein filed a motion to dismiss the complaint for failure to state a claim. The district court granted the motion, dismissing the case “in its entirety” (“the federal judgment”). The federal judgment specifically addressed Bugg’s alleged federal causes of action

and stated further that “[t]he court has considered [Bugg’s] other claims . . . and finds them to be without merit.”

Three months later, Bugg filed a petition in a Missouri state court against Rutter and Goldstein. The petition alleged the same causes of action that Bugg had alleged in the federal action. Once again, the alleged facts underpinning Bugg’s claims were that Rutter and Goldstein acted improperly in bringing the state action and in attempting to enforce the state judgment by seeking the court’s order of contempt.

Rutter and Goldstein filed a motion to dismiss for failure to state a claim and argued that Bugg’s claims were barred by the doctrines of *res judicata* and/or collateral estoppel. The circuit court granted the motion to dismiss.

On appeal, Bugg argues that the circuit court erred in concluding that the doctrine of *res judicata* barred his claims in that the federal judgment did not dispose of his state law claims. We disagree.

In deciding whether a federal judgment precludes a plaintiff from recovering under a petition filed in the state courts of Missouri, we apply the federal law of *res judicata*. *Brown v. Simmons*, 270 S.W.3d 508, 512-13 (Mo. App. S.D. 2008).

“Res judicata applies to prevent repetitive suits involving the same cause of action.” *Ripplin Shoals Land Co., LLC v. U.S. Army Corps of Eng’rs*, 440 F.3d 1038, 1042 (8th Cir. 2006). The doctrine will bar a second suit if the prior judgment (1) was entered by a court of competent jurisdiction; (2) disposed of the same causes of action involved in the second suit; (3) involved the same parties (or those in privity with them) who are involved in the second suit; and (4) constituted a final judgment on the merits. *Id.*

Bugg argues that the federal judgment was not a final judgment on the merits with respect to the state law claims.

Federal Rule of Civil Procedure 41(b) governs involuntary dismissals for failure to prosecute a claim, but it also provides that “[u]nless the dismissal order states otherwise . . . any dismissal *not* under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” (Emphasis added.)

A dismissal for failure to state a claim, *see* Rule 12(b)(6), is an involuntary dismissal “not under this rule” as contemplated by Rule 41(b), and therefore it operates as an “adjudication on the merits” unless the court specifies otherwise. *See Paganis v. Blonstein*, 3 F.3d 1067, 1071 (7th Cir. 1993). For the purposes of *res judicata*, “on the merits” means the opposite of “without prejudice.” *Semtek Int’l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505 (2001). Thus, under the federal law applicable here, unless the court specifies otherwise, a dismissal for failure to state a claim is on the merits and with prejudice. Rule 41(b); *Semtek*, 531 U.S. at 505.

Here, the district court’s dismissal of Bugg’s complaint was on the merits and with prejudice. The district court dismissed the federal complaint upon Rutter and Goldstein’s motion

to dismiss for failure to state a claim. Bugg contested the motion, and therefore the dismissal was clearly not a “voluntary dismissal” as contemplated by Rule 41(a). Nor did it fall within the exceptions to Rule 41(b): the basis of the dismissal was neither lack of jurisdiction, improper venue, nor failure to join a necessary party. Accordingly, the dismissal was “on the merits,” Rule 41(b), which means that it was “with prejudice.” *Semtek*, 531 U.S. at 505.

Our inquiry, however, does not end here, for it is the substance of the dismissal—as opposed to whether it was technically with or without prejudice—that governs whether a dismissal should have claim-preclusive effect. *Styskal v. Weld Cnty. Bd. of Cnty. Comm’rs*, 365 F.3d 855, 859 n.1 (10th Cir. 2004) (relying on *Semtek*, 531 U.S. at 501-02). That is, claim preclusion will ordinarily depend on whether the court ruled on the substance of the plaintiff’s claims as opposed to dismissing them based on some procedural bar. *See id.*

Here, the district court ruled on the substance of Bugg’s claims. The district court first addressed Bugg’s federal causes of action and then stated:

[t]he court has considered plaintiff’s other claims . . . and finds them to be without merit. Thus, for these reasons, and for those set forth in defendants’ suggestions, it is ORDERED that defendants’ motion [to dismiss] is granted and this case is dismissed in its entirety.

Having already dismissed Bugg’s alleged federal causes of action, the district court could only have meant Bugg’s state law claims when it referred to the “other claims” (Bugg does not dispute this point). That the court found the state law claims to be “without merit” suggests that the district court was ruling on their substance. The court’s failure to cite any procedural bar to Bugg’s state law claims further suggests that its dismissal was merits-based. Accordingly, we hold that the district court dismissed Bugg’s state law claims because they are substantively without merit.

The district court considered Bugg’s state law claims and then dismissed them “in [their] entirety” because they were “without merit.” The other elements of *res judicata*—jurisdiction, same parties, same claims, and a full and fair opportunity to litigate—are met here. Accordingly, we affirm the trial court’s dismissal of Bugg’s petition.

Opinion by: Karen King Mitchell, Judge

December 14, 2010

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