This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2006).

STATE OF MINNESOTA
IN COURT OF APPEALS
A07-0646

Patrick Vizenor,
Appellant,

vs.

Todd Hoffman, et al.,
Respondents.

Filed April 8, 2008
Affirmed
Connolly, Judge

Wright County District Court
File No. 86-CV-06-5214

Patrick Vizenor, 10113-041 D211, FPC Box 1000, Duluth, MN 55814-1000 (pro se appellant)

Jon K. Iverson, Amber S. Lee, Iverson Reuvers, 9321 Ensign Avenue South, Bloomington, MN 55438 (for respondents)

Considered and decided by Minge, Presiding Judge; Kalitowski, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

CONNOLLY, Judge

This is an appeal from summary judgment granted in a judicial forfeiture proceeding. Appellant argues that the district court erred by not allowing him to amend

his complaint before respondents filed a responsive pleading. He further contends that the district court erred in concluding that the doctrine of res judicata barred his claim based on a settlement agreement in a prior forfeiture action. Finally, he asserts that he never received notice of the forfeiture and therefore cannot be deemed to have waived his right to contest. Because this suit was barred by res judicata, we affirm.

FACTS

On August 9, 2000, respondent Deputy Todd Hoffman of the Wright County Sheriff's Department executed a search warrant on appellant's residence. Pursuant to the warrant, the Sheriff's Department seized approximately 100 items including 41 firearms, ammunition, currency, financial records and mail, chemicals, two motorcycles, and two automobiles associated with appellant's methamphetamine laboratory and marijuana-growing enterprise.[1]

On August 18, 2000, Wright County served on appellant a "Notice of Seizure and Intent to Forfeit Property" pursuant to Minn. Stat. § 609.5314 (2000). This notice informed appellant that Wright County intended to forfeit 39 firearms seized on August 9, 2000. On October 17, 2000, appellant initiated a civil action to seek a judicial determination of the forfeiture.

[1] Appellant pleaded guilty in United States District Court on November 30, 2001 to knowingly and intentionally attempting to manufacture in excess of 50 grams of methamphetamine in violation of 21 U.S.C. §§ 841 (a)(1), (b)(1)(A) (2000) and 21 U.S.C. § 846 (2000). He was sentenced to prison for 135 months.

On November 7, 2000, Wright County notified appellant by certified mail that it intended to forfeit $557.31 in currency seized on August 9, 2000.[2] On March 25, 2002, Wright County notified appellant it intended to forfeit two motorcycles, two vehicles, and two additional firearms.

On April 10, 2002, appellant settled his forfeiture action with Wright County. The county agreed to forego the forfeiture of the two motorcycles, the two vehicles, and the two additional firearms from the March 25, 2002 notice. In exchange, appellant agreed to dismiss his demand for judicial determination of the forfeiture and to forfeit the other 39 firearms. Appellant contends that he did not agree to forfeit all other property to the county but did not raise that issue at the time. An order of dismissal was entered on April 29, 2002.

On June 18, 2005, appellant wrote to Wright County Attorney Thomas Kelly seeking return of some of the property seized on August 9, 2000, including $557.31 in U.S. currency. Appellant wrote again on September 3, 2005, to request the return of those items. The county attorney's office replied that it did not possess any property belonging to appellant.

Appellant initiated this suit pursuant to 42 U.S.C. § 1983 on August 1, 2006, against respondents, who included Deputy Hoffman and the Wright County Sheriff's Department. Appellant requested the return of bills, mail and financial records, a pellet

[2] Appellant claims that he never received this notice, and the record does not contain a proof of receipt from that certified mailing. However, appellant never raised this issue in the district court.

gun, and $557.31 in currency seized on August 9, 2000. Appellant alleged that the county confiscated his property in violation of his due-process rights.

Respondent moved for summary judgment on November 14, 2006, and in response, appellant sent an amended complaint on November 29, 2006. At the summary judgment motion hearing before the district court, appellant made a verbal motion to amend his complaint. The amended complaint would have added claims against Wright County, Deputy Todd Hoffman and Deputy Jason Kramber, in their individual and official capacities, and other employees of Wright County whose names and titles are unknown. On January 19, 2007, the district court granted respondents' motion for summary judgment with prejudice and denied appellant's motion to amend his complaint. The district court held that (1) the Wright County Sheriff's Department is not a legal entity subject to suit; (2) appellant did not state a claim for relief under 42 U.S.C. § 1983; (3) res judicata barred appellant's claims; and (4) appellant waived his right to contest the forfeiture. This appeal follows.

D E C I S I O N

On appeal from summary judgment, this court asks (1) whether there are any genuine issues of material fact; and (2) whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993) (citation omitted). This court views the

evidence in the light most favorable to the party against whom judgment was granted. *Id*. This court will affirm a grant of summary judgment if it can be sustained on any ground. *Winkler v. Magnuson*, 539 N.W.2d 821, 828 (Minn. App. 1995), *review denied* (Minn. Feb. 13, 1996).

Respondents contend that appellant cannot relitigate the forfeiture action because the settlement of the prior action bars this action pursuant to the doctrine of res judicata. Appellant argues that res judicata is inapplicable to this claim because the prior litigation did not involve the same property or cause of action. We disagree.

"Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). A final judgment on the merits bars a second suit for the same cause of action. *Paulos v. Johnson*, 597 N.W.2d 316, 319 (Minn. App. 1999), *review denied* (Minn. Sept. 28, 1999). The Minnesota Supreme Court describes the doctrine as follows:

> Res judicata operates as an absolute bar to a subsequent claim when: (1) the earlier claim involved the same claim for relief; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter.

State v. Joseph, 636 N.W.2d 322, 327 (Minn. 2001).

"Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action." *Hauschildt*, 686 N.W.2d at 840. The application of this doctrine is a question of law which this court reviews de novo. *Paulos*, 597 N.W.2d at 318-19.

A. The earlier claim involved the same claim for relief

This lawsuit involves the same cause of action as the prior claim.[3] "Two causes of action are the same when they involve the same set of factual circumstances or when the same evidence will sustain both actions." *Myers v. Price*, 463 N.W.2d 773, 777 (Minn. App. 1990), *review denied* (Minn. Feb. 4, 1991). In his 2000 lawsuit against Wright County, appellant asked for a judicial determination of the forfeiture of personal property seized by the sheriff's department on August 9, 2000. In this case, appellant is once again challenging the taking and forfeiture of personal property from that same search and seizure. Appellant's forfeiture action and this action involve the same set of factual circumstances.

B. The earlier claim involved the same parties or their privies

"[T]he circumstances of each case must be examined to determine the nature and extent of the relationship between a formal party and the person alleged to have been in privity with that party." *Crossman v. Lockwood*, 713 N.W.2d 58, 62 (Minn. App. 2006). Wright County was the named party in the first action. The original complaint in this suit brought an action against the sheriff's department.[4] Although the sheriff's department is the named party, it is not a legal entity subject to suit.[5] Therefore, if this case were to go

[3] This analysis is applicable to both the original and the amended complaint.

[4] The first suit also brought an action against Deputy Todd Hoffman. The district court concluded that because the suit was not brought against Deputy Hoffman in his individual capacity, and appellant failed to allege a cognizable constitutional violation, all claims against Deputy Hoffman in his official capacity were dismissed. This decision was not appealed.

[5] The district court made this determination and it was not appealed.

to trial, Wright County would be the proper party.[6] These two claims involve the same party for all intents and purposes.

The amended complaint brings suit against two deputies in their individual and official capacities. "'Privity' expresses the idea that as to certain matters and circumstances, people who are not parties to an action but who have interests affected by the judgment as to certain issues in the action are treated as if they were parties." *SMA Servs., Inc. v. Weaver*, 632 N.W.2d 770, 774 (Minn. App. 2001). These deputies are in privity with Wright County. Wright County is the party in this suit under both the original and amended complaint. The deputies actually searched appellant's property and seized the items at issue. They are employees of Wright County. Their interests were affected by the forfeiture action because it was their job to seize the property and carry out the forfeiture. This relationship creates privity between Wright County and the deputies in their official capacities.

Moreover, the deputies in their individual capacities were in privity with Wright County. Their individual interests—a determination that the forfeiture was proper—were represented by Wright County in the first action, and would be similarly represented by Wright County in this action. *See Denzer v. Frisch*, 430 N.W.2d 471, 473 (Minn. App. 1988) (stating that those in privity include those whose interests are represented by a party to the action). Furthermore, even as individuals, they were acting under the

[6] In the amended complaint, appellant actually brings suit against Wright County, not the sheriff's department. Therefore, it would be exactly the same party as in the forfeiture action.

authority of Wright County. It is impossible to separate their individual interest from their official capacity. Privity exists between the deputies and Wright County.

C. There was a final judgment on the merits

"A judgment based on a settlement agreement is a final judgment on the merits, but only with respect to the issues and claims actually settled." *Goldberger v. Kaplan, Strangis, Kaplan, P.A.*, 534 N.W.2d 734, 736 n.1 (Minn. App. 1995), *review denied* (Minn. Sept. 28, 1995). As discussed above, the settled claim and this claim are the same for res judicata purposes. They stem from the same set of operative facts and the same evidence would sustain both actions. The settlement agreement included a dismissal with prejudice and there was a final judgment on the merits for res judicata purposes.

D. The estopped party had a full and fair opportunity to litigate the matter

Appellant and respondents reached an agreement regarding which items would be forfeited. Respondents agreed to return two vehicles, two motorcycles, and two firearms in exchange for appellant agreeing to forfeit 39 other firearms. It is true that the agreement did not specifically mention the currency and a few other items. Nonetheless, the settlement was agreed upon nearly two years after that additional property was seized, along with the rest, and did not carve out any exceptions. Appellant must have been well aware that the money and other items were no longer in his possession. He had an opportunity during the first proceeding to decide which items he wanted to forfeit and which he wanted to keep. He made that decision. He cannot come back now, several years later, and argue that he wanted to keep more items.

Res judicata bars this suit under both the original and amended complaint. The district court need not grant leave to amend a complaint if the amended complaint would fail to state a cognizable claim. *See Copeland v. Hubbard Broadcasting, Inc.*, 526 N.W.2d 402, 405 (Minn. App. 1995) (stating that it is not an abuse of discretion to deny a motion to amend a complaint to assert a claim that is not legally recognized). Therefore, it is unnecessary to determine whether the amendment should have been granted or allowed as a matter of right. Because res judicata bars all claims, we need not address the other issues that appellant has raised. *See Jewish Cmty. Action v. Comm'r of Pub. Safety*, 657 N.W.2d 604, 608 (Minn. App. 2003) (stating that when one issue is dispositive it is unnecessary to address appellant's other arguments).

Affirmed.