STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1281

Kevin Terrance Hannon, petitioner,
Appellant,

vs.

John Sanner, et al.,
Respondents,

Jeffery Oxton,
Respondent,

The Honorable Vicki E. Landwehr, et al.,
Respondents.

Filed June 24, 2008
Affirmed
Schellhas, Judge

Stearns County District Court
File No. 73-C8-06-004514

Kevin T. Hannon, #205210, 5329 Osgood Avenue North, Stillwater, MN 55082 (pro se appellant)

Kenneth H. Bayliss, Megan E. Burkhammer, Quinlivan & Hughes, P.A., 400 South First Street, Suite 600, P.O. Box 1008, St. Cloud, MN 56302-1008 (for respondents John Sanner and Will Brost)

Mark P. Hodkinson, David Camarotto, Bassford Remele, P.A., 33 South Sixth Street, Suite 3800, Minneapolis, MN 55402-3707 (for respondent Jeffery Oxton)

Lori Swanson, Attorney General, John Garry, Assistant Attorney General, 445 Minnesota Street, Bremer Tower, Suite 1800, St. Paul, MN 55101 (for respondents Hon. Vicki E. Landwehr and Tim Roberts)

Considered and decided by Shumaker, Presiding Judge; Hudson, Judge; and Schellhas, Judge.

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

SCHELLHAS, Judge

Appellant challenges the dismissal of his complaint seeking damages for alleged violations of, and conspiracy to violate, his constitutional rights. Because the district court did not err in determining that appellant's claims under 42 U.S.C. § 1983 (2000) are barred by collateral estoppel, res judicata, and the statute of limitations, and in determining that his complaint fails to adequately state a claim for civil conspiracy, we affirm.

FACTS

On September 22, 1999, appellant Kevin Terrance Hannon, under suspicion of killing his girlfriend, was interrogated by respondents John Sanner, Captain of the Stearns County Police Department, and Jeffery Oxton, a detective with the St. Cloud Police Department. During his interrogation, appellant said, "Can I have a drink of water and then lock me up—I think we really should have an attorney." Despite appellant's request and statement, Sanner and Oxton continued to interrogate appellant, and appellant made self-incriminatory statements during the continued interrogation and was eventually charged with murder. The district court denied appellant's motion to suppress statements he made after he had requested an attorney. On June 20, 2000, appellant was convicted

of five counts of murder for killing his girlfriend, and he challenged his convictions on the ground that his self-incriminatory statements used against him at trial were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612 (1966). The Minnesota Supreme Court reversed appellant's conviction on the ground that the district court erred in admitting the self-incriminatory statements, because appellant unequivocally invoked his right to counsel. *State v. Hannon*, 636 N.W.2d 796, 799-800 (Minn. 2001).

Federal Court Action

Appellant then filed civil suit in federal district court against respondents Sanner, Oxton, Will Brost, Assistant County Attorney for Stearns County, and Vicki E. Landwehr, Chief Judge of the Seventh Judicial District, who presided over appellant's trial in state district court. In his federal suit, appellant sought civil damages under 42 U.S.C. § 1983 (2000), alleging that: (1) Sanner and Oxton violated his Fifth Amendment rights; (2) Sanner, Oxton, and Brost tampered with the grand jury and trial witnesses, and; (3) Judge Landwehr committed judicial misconduct. The federal district court dismissed claims 2 and 3, and a federal magistrate judge considered appellant's remaining claim that he should recover civil damages because Sanner and Oxton violated his Fifth Amendment rights.

In support of their motions for summary judgment on their remaining claim, Sanner and Oxton first argued that they did not violate any right guaranteed by the United States Constitution or federal law. The magistrate agreed, concluding that while the Minnesota Supreme Court had held that appellant's statement, "I think we should really

have an attorney," was an unequivocal request for counsel under Minnesota law, it was not an unequivocal request for counsel under federal law. Second, Sanner and Oxton argued that there was no cause of action for monetary relief for *Miranda* violations. Again the magistrate agreed, concluding that because the *Miranda* warning requirement was prophylactic in nature, the appropriate remedy for violating *Miranda* was the exclusion of any compelled self-incrimination. Third, Sanner and Oxton argued that they were entitled to qualified immunity because they were government officials performing discretionary functions. The federal magistrate again agreed, concluding that because Sanner and Oxton had not violated appellant's constitutional rights based on the federal standard for an unequivocal request for counsel, they were entitled to qualified immunity. The magistrate recommended that summary judgment be granted in favor of Sanner and Oxton.

On March 8, 2004, the federal district court granted Sanner and Oxton's motions for summary judgment. Appellant challenged the district court's rulings and the Eighth Circuit Court of Appeals affirmed. *Hannon v. Sanner*, 441 F.3d 635 (8th Cir. 2006).

State Court Action

After his civil claims were dismissed in federal court, appellant commenced this pro se action in state court asserting similar section 1983 claims against respondents. In his complaint, appellant alleges that "Sanner and Oxton violated [appellant's] clearly established rights to due process in both their individual and official capacities" and that Judge Landwehr was aware that appellant's constitutional rights were being violated but "did nothing to intercede in their continuation." In this state-court action, appellant

named an additional defendant, Stearns County Court Administrator Tim Roberts, and added a new claim—that respondents were involved in a "civil conspiracy" to deprive him of his rights to due process and equal protection under the law. Sanner, Brost, and Oxton moved to dismiss appellant's claims for failure to state a claim upon which relief can be granted. At the hearing on these motions, appellant informed the district court that he wished to dismiss his claims against Judge Landwehr and Roberts.

On February 15, 2007, the district court dismissed appellant's claims against Judge Landwehr and Roberts upon appellant's request; it also dismissed the claims against Sanner, Brost and Oxton, concluding that appellant could not recover money damages for a *Miranda* violation and that the claims pertaining to the *Miranda* violation were barred by res judicata and collateral estoppel and were time-barred; and it dismissed appellant's civil conspiracy claim for failure to state a claim upon which relief can be granted. All claims were dismissed with prejudice. This appeal follows.

D E C I S I O N

Dismissal for Failure to State a Claim

Review of a case dismissed for failure to state a claim upon which relief can be granted is limited to whether the complaint sets forth a legally sufficient claim for relief. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). "A Rule 12.02(e) motion raises the single question of whether the complaint states a claim upon which relief can be granted." *Martens v. Minn. Mining & Mfg. Co.*, 616 N.W.2d 732, 739 (Minn. 2000). Our standard of review is de novo. *See Frost-Benco Elec. Ass'n v. Minn. Pub. Utils. Comm'n,* 358 N.W.2d 639, 642 (Minn. 1984) ("[A]n appellate court

need not give deference to a trial court's decision on a legal issue."). In conducting our review of the legal sufficiency of appellant's claims, we accept the facts of the complaint as true and construe all reasonable inferences in favor of the nonmoving party. *Radke v. County of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005). "We will not uphold a Rule 12.02(e) dismissal 'if it is possible on any evidence which might be produced, consistent with the pleader's theory, to grant the relief demanded.'" *Id.* (quoting *N. States Power Co. v. Franklin*, 265 Minn. 391, 395, 122 N.W.2d 26, 29 (1963)).

In *Hannon v. Sanner*, the federal court of appeals held that the remedy for an alleged violation of the constitutional rule announced in *Miranda* and subsequent decisions is suppression of evidence, and specifically noted that the relief available for the violation was ultimately obtained by appellant from the Minnesota Supreme Court. 441 F.3d 635, 637 (8th Cir. 2006). In reaching its holding, the *Hannon* court said

> [s]tatements obtained in violation of the *Miranda* rule are not "compelled," and the use of such statements in a criminal case does not amount to compelled self-incrimination. The admission at trial of statements obtained in violation of *Miranda* thus does not implicate the core of the Fifth Amendment, and it does not result in the deprivation of a "right[ ] … secured by the Constitution" within the meaning of § 1983, any more than does the eliciting of the statements in the first place.

Id.

Because appellant has no claim for monetary damages under section 1983 and has already obtained the only relief available to him—suppression of the evidence at his criminal retrial—the district court properly dismissed his section 1983 claim for failure to state a claim upon which relief can be granted.

Dismissal of Claims as Time-Barred

The district court ruled that appellant's claims are time-barred because they arose out of his interrogation that occurred on September 22, 1999, and appellant did not commence this action until at least August 25, 2006, the date of his complaint. "The construction and applicability of statutes of limitations are questions of law that this court reviews de novo." *Noske v. Friedberg*, 670 N.W.2d 740, 742 (Minn. 2003) (quotation omitted). The statute of limitations applied to section 1983 claims in Minnesota is six years. *Simington v. Minn. Veterans Home*, 464 N.W.2d 529, 530 (Minn. App. 1990), *review denied* (Minn. Mar. 15, 1991). "A cause of action accrues and the statute of limitations begins to run when the cause of action will survive a motion to dismiss for failure to state a claim upon which relief can be granted." *Noske*, 670 N.W.2d at 742 (quotation omitted).

Appellant argues that the statute of limitations began to run on the date that his self-incriminatory statements were used against him as evidence in his first criminal trial. We agree. *See Chavez v. Martinez*, 538 U.S. 760, 767, 123 S. Ct. 1994, 2001 (2003) (holding that a person's constitutional rights under the Self-Incrimination Clause are violated at the time when improperly obtained self-incriminatory statements are used against him in a criminal proceeding). And although the record does not indicate the exact date on which appellant's statements were used against him in his first criminal trial, his resulting conviction occurred on June 20, 2000, so we know that the self-incriminatory statements were used against him on or before June 20, 2000.

Appellant argues that in 2003 respondents tampered with a witness, apparently arguing that violations of, or a conspiracy to violate, his constitutional rights continued to that time. But appellant did not raise the allegation of witness tampering before the district court; he raises it for the first time on appeal. Generally, this court will not review matters not brought before the district court, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and we view this matter as not properly before us.

Because appellant commenced this action more than six years after June 20, 2000, any section 1983 claims that arose out of the *Miranda* violation are time-barred. Thus, the district court properly dismissed appellant's claims with prejudice as time-barred under the applicable statute of limitations.

Res Judicata

The district court concluded that appellant's claims are barred by the doctrines of res judicata and collateral estoppel. Res judicata and collateral estoppel are related doctrines. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). "Fundamental to both doctrines is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties or their privies." *Id.* at 837 (quotations omitted). The doctrine of res judicata, also known as "claim preclusion," is broader than collateral estoppel and applies more generally to a set of circumstances giving rise to entire claims or lawsuits. *Id.* "Application of res judicata to preclude a claim is a question of law that we review de novo." *Id.* at 840.

"Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Id.* at 837. "Res judicata applies as an absolute bar to a subsequent claim when (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Id.* at 840. "Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action." *Id.*

"Res judicata requires the same cause of action be asserted in both suits. The cause of action is the same when it involves the same set of factual circumstances, or when the same evidence will sustain both actions." *Beutz v. A.O. Smith Harvestore Prods., Inc.*, 431 N.W.2d 528, 533 (Minn. 1988) (citation omitted). "The common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions." *Hauschildt*, 686 N.W.2d at 840 (quotation omitted). Additionally, "claims cannot be considered the same cause of action if the right to assert the second claim did not arise at the same time as the right to assert the first claim." *Id.* (quotation omitted). The United States Supreme Court has cautioned that res judicata should be invoked only after careful inquiry because it "may govern grounds and defenses not previously litigated" and therefore "blockades unexplored paths that may lead to truth." *Id.* at 837 (citing *Brown v. Felsen*, 442 U.S. 127, 132, 99 S. Ct. 2205, 2210 (1979)).

Appellant argues that his state court action is not the same cause of action as his federal case, asserting that he asked for different damages in his federal case and claiming that other (unidentified) factors are different as well. But this court has found that a different claim for damages does not amount to a different cause of action. *Hofstad v. Hargest*, 412 N.W.2d 5, 7-8 (Minn. App. 1987). In *Hofstad*, this court said

> Minnesota law recognizes two aspects of the doctrine of res judicata: (1) merger or bar, and (2) collateral estoppel. The first, also known as estoppel by judgment, serves as an absolute bar to a subsequent suit on the same cause of action both as to matters actually litigated and as to other claims or defenses that might have been litigated.

Id. (quotation and citation omitted). "The phrase, 'every matter which might have been properly litigated,' includes every element of the cause of action," and "it bars 'new grounds for relief' upon the same cause of action which were not presented in the first case." *Id*. (quoting *Melady-Briggs Cattle Corp. v. Drovers State Bank of St. Paul*, 213 Minn. 304, 309, 6 N.W.2d 454, 457 (1942)). In *Hofstad*, we said that "[a] claim for damages is a claim for relief, not an assertion of a different cause of action." *Id.* at 7-8. Here, appellant commenced suit in state district court against the same parties,[1] based on the same circumstances as in his federal suit in which final judgment was issued on the merits of the case. *Hannon*, 441 F.3d 635. Nothing in the record before us reflects any appreciable difference in factual circumstance between this case and appellant's federal

[1]As earlier noted, appellant named an additional defendant in his state court complaint, Stearns County Court Administrator Tim Roberts, but only in connection with his civil-conspiracy claim. Moreover, as earlier noted, appellant requested that Roberts be dismissed along with Judge Landwehr and the district court granted his request.

case. The evidence that would sustain appellant's present action would be the same as in his federal case. Because the two causes of action are the same, appellant's case is barred by res judicata. Additionally, because the doctrine of res judicata bars claims that a plaintiff *could have brought* arising from the same factual circumstances, *Petition for Improvement of County Ditch No. 86, Branch 1 v. Phillips*, 625 N.W.2d 813, 817 n.4 (Minn. 2001), res judicata bars appellant's section 1983 claim for due-process violations and his civil-conspiracy claim. Therefore, the district court did not abuse its discretion in dismissing appellant's claims with prejudice under the doctrine of res judicata.

Collateral Estoppel

Collateral estoppel requires the following prongs to be met:

> (1) the issue must be identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt, 686 N.W.2d at 837 (quotation omitted). Here, as in *Hauschildt*, the pivotal question is whether the issues decided in the federal case are identical to any issue raised in appellant's state court action such that all or part of his action is collaterally estopped. "The issue on which collateral estoppel is to be applied must be the same as that adjudicated in the prior action and it must have been necessary and essential to the resulting judgment in that action." *Id.* "The issue must have been distinctly contested and directly determined in the earlier adjudication for collateral estoppel to apply." *Id.* at 837-38. "[N]either res judicata nor collateral estoppel is to be rigidly applied. Instead,

the focus is on whether their application would work an injustice on the party against whom the doctrines are urged." *Id.* at 837 (citations omitted).

In this case, the Eighth Circuit Court of Appeals ruled that appellant's federal claims for monetary damages based on violations of his Fifth Amendment rights could not succeed because such damages are not appropriate remedies for *Miranda* violations and because his self-incriminatory statements were not compelled. *Hannon*, 441 F.3d at 637. Appellant, a party to the federal case, provides no evidence that he was not afforded a fair and full opportunity to be heard on the issue. Thus, because appellant's section 1983 claims arose out of alleged violations of his Fifth Amendment rights and his claims were dismissed in federal court on their merits, the same claims are barred here by collateral estoppel.

Civil Conspiracy

Appellant's complaint alleges a cause of action for civil conspiracy. The district court dismissed this claim on the ground that it failed to allege facts sufficient to support a claim for legal relief. "A conspiracy is a combination of persons to accomplish an unlawful purpose or a lawful purpose by unlawful means." *Harding v. Ohio Cas. Ins. Co.*, 230 Minn. 327, 337, 41 N.W.2d 818, 824 (1950). Appellant's complaint contains only the allegations that "a 'civil conspiracy' existed between . . . Oxton and . . . Sanner to deprive [appellant] of rights to due process of law" and that "a conspiracy existed between [respondents] . . . to deprive [appellant] of his constitutionally protected rights to both due process and equal protection of laws." An action for civil conspiracy must allege an underlying tort. *D.A.B. v. Brown*, 570 N.W.2d 168, 172 (Minn. App. 1997). In

this case, the only torts alleged in the complaint are the section 1983 claims. This court has held that in order to "avoid frivolous conspiracy suits under section 1983, the complaint must allege with specificity material facts showing the existence and the scope of the alleged conspiracy." *Brotzler v. County of Scott*, 427 N.W.2d 685, 690 (Minn. App. 1988) (citing *Slotnick v. Staviskey*, 560 F.2d 31, 33 (1st Cir. 1977)). Appellant alleges no specific material facts showing the existence of a conspiracy; thus, he fails to state a claim for which legal relief can be granted. The district court properly dismissed with prejudice appellant's claim of civil conspiracy.

Affirmed.