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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2026-2027

CL-2026-0261

Henri N. Beaulieu, Jr.

v.

Jay Whitworth and Sean Kevin Lando

Appeal from Shelby Circuit Court
(CV-25-900227)

EDWARDS, Judge.

On March 13, 2025, Henri N. Beaulieu, Jr., filed in the Shelby Circuit Court ("the trial court") a complaint ("the 2025 complaint") against Jay Whitworth and Sean Kevin Lando in which Beaulieu alleged that, on August 20, 2023, Whitworth and Lando had engaged in loud,

disruptive, and disrespectful behavior at a pool located in the Nottingham subdivision, which is adjacent to property on which Beaulieu and his father, Henri N. Beaulieu, Sr. ("the elder Beaulieu"), reside.¹ Beaulieu alleged that, despite having knowledge that the elder Beaulieu was being treated for brain cancer, Whitworth and Lando "engaged in loud, disruptive behavior at the pool -- yelling across the area and creating a significant disturbance that interfered with [the elder Beaulieu's] ability to rest inside his home." Beaulieu further alleged that, despite his request to Whitworth and Lando that they cease making such a disturbance, "[i]nstead of showing any compassion or basic human decency, [Whitworth and Lando] intentionally escalated their disruptive behavior -- responding with loud, mocking laughter, further amplifying the noise and deliberately adding to the cruelty of the situation." In addition, Beaulieu alleged that, in October 2023, in a comment on a social-media post Beaulieu made about a different subject, "Whitworth ... admitted to making the deliberate noise despite knowing [that the

¹The property was owned by the elder Beaulieu and his wife, Johnie C. Beaulieu, and had two residences located upon it. The elder Beaulieu died at some point after August 2023, but the record does not disclose exactly when.

elder Beaulieu] had brain cancer, stating, 'no rules or laws broken.'" Those actions, Beaulieu alleged, were "malicious, demonstrating a deliberate and callous disregard for [Beaulieu's] distress and emotional suffering," and had "caused severe emotional distress to [Beaulieu], exacerbating the emotional toll of [the elder Beaulieu's] terminal illness [on Beaulieu] and creating lasting psychological harm." Beaulieu asserted claims of intentional infliction of emotional distress, wantonness, and civil conspiracy and requested awards of both compensatory and punitive damages.

On April 22, 2025, Whitworth and Lando filed what they titled a motion to dismiss the 2025 complaint ("the 2025 dispositive motion"). In the 2025 dispositive motion, they asserted that the 2025 complaint asserted nearly identical claims to those that Beaulieu had asserted in a 2024 action against them and also that the claims relating to conduct at the pool had been adjudicated in a 2020 action. Specifically, Whitworth and Lando averred that the claims asserted in the 2024 action were identical to the claims asserted in the 2025 complaint, which the trial court had dismissed on March 4, 2025. Whitworth and Lando had moved to dismiss the 2024 action on the ground that it should be abated

pursuant to Ala. Code 1975, § 6-5-440, which prohibits a plaintiff from simultaneously prosecuting two actions based on the same claims against the same party.² The trial court's order dismissing the 2024 action ("the 2024 dismissal order") concluded that "each of the claims in this action were raised or could have been raised in the [the 2020 action]," that Beaulieu had "agreed to be bound by the outcome of [the 2020 action]," and that the "claims in [the 2024 action] are abated by the prior pending action," i.e., the 2020 action. Beaulieu did not appeal the 2024 dismissal order.

The 2020 action was brought against, among others, the Nottingham Homeowners' Association, Inc.; McKay Management Company d/b/a Associa McKay Management; Associations, Inc., d/b/a Associa; Susan Slaney; and Regina Barr (collectively referred to as "the homeowners' association") by Beaulieu's wife, Donna Beaulieu; the elder Beaulieu; and the elder Beaulieu's wife (collectively referred to as "the

²Specifically, Ala. Code 1975, § 6-5-440, provides: "No plaintiff is entitled to prosecute two actions in the courts of this state at the same time for the same cause and against the same party. In such a case, the defendant may require the plaintiff to elect which he will prosecute, if commenced simultaneously, and the pendency of the former is a good defense to the latter if commenced at different times."

Beaulieu family").³ The 2020 action involved the Beaulieu family's attempt to enjoin the operation and use of the pool. The complaint in the 2020 action requested that the trial court declare that the pool was a private nuisance and order that the various defendants be enjoined from continuing the operation and use of the pool; the complaint in the 2020 action also requested a preliminary and a permanent injunction.⁴ The 2020 action was concluded with the entry of a judgment in favor of the homeowners' association on March 26, 2025.⁵ Thus, the 2025 dispositive

³As originally filed, the complaint in the 2020 action asserted claims against the above-named corporate defendants; Slaney and Barr, who were members of the board of directors of the Nottingham Homeowners' Association, in both their individual capacities and in their capacities as board members; and against Samuel Powell, Blake Thompson, Melody Thompson, Daniel Richards, and Amanda Richards. The Beaulieu family dismissed the claims against Powell, the Thompsons, and the Richardses between December 2020 and May 2021. In July 2021, the Beaulieu family also dismissed all claims against Slaney and Barr in their individual capacities.

⁴The complaint in the 2020 action originally sought an award of damages based on claims of negligence, wantonness, and intentional infliction of emotional distress; however, in July 2021, the Beaulieu family voluntarily dismissed those tort claims and any claim for an award of damages and proceeded solely on their claims for equitable relief based on the theory that the pool was a private nuisance that should be abated.

⁵The Beaulieu family appealed the 2020 judgment to this court, which assigned the appeal brought by the Beaulieu family as appeal number CL-2025-0593. On May 29, 2026, this court affirmed the 2020

motion rested on the argument that the doctrines of res judicata and/or collateral estoppel barred the claims asserted in the 2025 complaint.

Beaulieu responded to the 2025 dispositive motion, arguing that neither the doctrine of res judicata nor the doctrine of collateral estoppel applied to bar the claims asserted in the 2025 complaint. The trial court, after holding a hearing on the 2025 dispositive motion, entered a judgment on October 27, 2025, determining that the claims in the 2025 complaint had been resolved through the judgments entered in the litigation in the 2024 action and the 2020 action. Beaulieu filed a timely notice of appeal.

As noted above, Whitworth and Lando titled the 2025 dispositive motion as a motion to dismiss. In that motion, they requested that the trial court take judicial notice of the entirety of the proceedings associated with the 2024 action and the 2020 action and, in reply to Beaulieu's response to the 2025 dispositive motion, tendered evidentiary submissions, including a letter and e-mails from Beaulieu's counsel.

judgment in an unpublished memorandum. See Beaulieu v. Nottingham Homeowners' Ass'n, Inc. (No. CL-2025-0593, May 29, 2026), ___ So. 3d ___ (Ala. Civ. App. 2026) (table). Our supreme court denied the Beaulieu family's petition for the writ of certiorari on July 10, 2026.

Therefore, as Beaulieu correctly observes in his brief on appeal, the 2025 dispositive motion was, in effect, a motion for a summary judgment based on the affirmative defenses of res judicata and collateral estoppel. See Lloyd Noland Found., Inc. v. HealthSouth Corp., 979 So. 2d 784, 792 (Ala. 2007) (explaining that, "[a]lthough HealthSouth's motion addressing its defenses of res judicata and collateral estoppel was actually framed as a 'motion to dismiss,' the motion should have been treated as one seeking a summary judgment because the face of the complaint did not reference the prior litigation" and because the trial court was required to consider matters outside the pleadings in deciding the motion); see also American Tr. Corp. v. Champion, 793 So. 2d 811, 813 (Ala. Civ. App. 2001). Thus, we apply to Beaulieu's appeal the standard of review applicable to an appeal from a summary judgment based on the applicability of an affirmative defense.

"The doctrine of res judicata is an affirmative defense; the party asserting that defense has the burden of proving it at trial. Wilger v. State Dep't of Pensions & Security, 390 So. 2d 656 (Ala. Civ. App. 1980).

""If the movant [for a summary judgment] has the burden of proof at trial, the movant must support his motion with credible evidence, using any of the materials specified in Rule 56(c), [Ala.] R. Civ. P. ('pleadings, depositions, answers to

interrogatories, and admissions on file, together with the affidavits'). The movant's proof must be such that he would be entitled to a directed verdict if this evidence was not controverted at trial.'"

American Tr. Corp., 793 So. 2d at 813 (quoting Ex parte General Motors Corp., 769 So. 2d 903, 908 (Ala. 1999), quoting in turn Berner v. Caldwell, 543 So. 2d 686, 691 (Ala. 1989) (Houston, J., concurring specially)). Thus, Whitworth and Lando were "required to make a prima facie showing that the res judicata [and/or collateral estoppel] defense[s] entitled them to a judgment as a matter of law, i.e., that there was no genuine issue of material fact as to whether [one or both of those] defense[s] applied." American Tr. Corp., 793 So. 2d at 813.

Generally speaking, "[t]he doctrine of res judicata applies when a party attempts to relitigate the same cause of action that was previously litigated against the same defendant, " In re Estate of Hudson, 887 So.2d 923, 928 (Ala. Civ. App. 2004), and "[c]ollateral estoppel is an equitable defense interposed against a party attempting to relitigate an issue that has been resolved in an earlier case involving the same parties." Ex parte Flexible Prods. Co., 915 So. 2d 34, 45 (Ala. 2005).

"The elements of res judicata are: '(1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of parties, and (4)

with the same cause of action presented in both actions.' Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998). 'If those four elements are present, then any claim that was, or that could have been, adjudicated in the prior action is barred from further litigation.' 723 So. 2d at 636. 'Res judicata, therefore, bars a party from asserting in a subsequent action a claim that it has already had an opportunity to litigate in a previous action.' Lee L. Saad Constr. Co. v. DPF Architects, P.C., 851 So. 2d 507, 517 (Ala. 2002).

"....

"Collateral estoppel applies when (1) the issue in a prior case was identical to the issue being litigated in the present action, (2) the issue was actually litigated in the prior action by a court of competent jurisdiction, (3) resolution of that issue was necessary to the prior judgment, and (4) the same parties are involved in the two actions. Smith v. Union Bank & Trust, 653 So. 2d 933 (Ala. 1995); Reed v. Brookwood Med. Ctr., 641 So. 2d 1245 (Ala. 1994)."

Lloyd Noland Found., 979 So. 2d at 793-96.

In his brief on appeal, Beaulieu argues that the trial court's judgment finding the claims in the 2025 complaint to be barred by the doctrines of res judicata or collateral estoppel should be reversed. He first argues that, because the dismissal of the 2024 action was based on the application of § 6-5-440, the 2024 dismissal order was not a judgment on the merits for the purposes of the doctrines of res judicata or collateral estoppel. Beaulieu is correct that dismissals entered under § 6-5-440 are

typically without prejudice. See Ex parte Brooks Ins. Agency, 125 So. 3d 706 (Ala. 2013) (ordering a circuit court, pursuant to § 6-5-440, to enter an order dismissing an action without prejudice); Ex parte J.E. Estes Wood Co., 42 So. 3d 104 (Ala. 2010) (same). The 2024 dismissal order does not indicate whether it was entered with or without prejudice, but the case-action-summary sheet reflecting the entry of the 2024 dismissal order recorded the order as a dismissal without prejudice.

Alabama law is well settled that "a dismissal 'without prejudice' is not an adjudication on the merits and does not bar the filing of another lawsuit asserting the same cause of action." Prestige Design & Build, LLC v. James, 421 So. 3d 677, 678-79 (Ala. 2025). The doctrines of res judicata and collateral estoppel both require that an issue be litigated and decided in a previous judgment on the merits. See Smith v. Union Bank & Tr. Co., 653 So. 2d 933, 935 (Ala. 1995) (explaining that an order "dismissing the previous action without prejudice ... [did] not [adjudicate] the merits of the action, and its order of dismissal therefore could not be given res judicata effect," and that, "because the dismissal was without prejudice, there was no 'actual litigation' for the purposes of collateral estoppel"). Moreover, an order dismissing an action without

prejudice is not only not an adjudication of the merits of the claim, but is also not capable of supporting an appeal. Ragland v. State Farm Mut. Auto. Ins. Co., 238 So. 3d 641, 643 (Ala. 2017) ("Generally speaking, an order dismissing a claim without prejudice will not support an appeal.").

Whitworth and Lando contend that the language of the 2024 dismissal order made "a dispositive ruling on the merits of the preclusion defense" that Beaulieu failed to challenge in an appeal from that order. Whitworth's brief, p. 13.⁶ The trial court's express determination in the 2024 dismissal order that the claims in the 2024 action either were or could have been brought in the 2020 action appears to have been based on the requirement that a trial court faced with the question whether an action should be dismissed under § 6-5-440 because of the pendency of another action consider "'whether a judgment in one suit would be res judicata of the other.'" Chiepalich v. Coale, 36 So. 3d 1, 3 (Ala. 2009) (quoting Sessions v. Jack Cole Co., 276 Ala. 10, 12, 158 So. 2d 652, 654-55 (1963)). At the time the 2024 dismissal order was entered, the 2020 action had not yet been resolved by the entry of a final judgment and

⁶Whitworth filed a responsive brief; Lando's brief adopts the legal arguments set forth in Whitworth's brief in their entirety.

could therefore not have supported the application of the doctrines of res judicata or collateral estoppel, which is surely why the abatement defense was interposed. Thus, we conclude that Whitworth and Lando failed to establish that the claims in the 2025 complaint were barred by either the doctrine of res judicata or the doctrine of collateral estoppel based upon the 2024 dismissal order.

Regarding the preclusive effect of the judgment entered in the 2020 action, Beaulieu argues that Whitworth and Lando failed to establish the elements of res judicata or the elements of collateral estoppel. Because we find the issue dispositive of the application of both the doctrine of res judicata and the doctrine of collateral estoppel, we first consider whether Whitworth and Lando presented sufficient proof of the substantial identity of the parties, as required by both doctrines.

The requirement in both the doctrine of res judicata and the doctrine of collateral estoppel that

"the parties be the same in both actions[] is known as the doctrine of mutuality of estoppel. It is a judicially created doctrine declaring that unless both parties in a second action are bound by the judgment in a previous case, neither party in the second action should be bound, i.e., a nonparty as to the first action may not use the prior judgment as determinative of the same issue in the second action."

Jones v. Blanton, 644 So. 2d 882, 886 (Ala. 1994) (plurality opinion).

"That is, a person who can claim the benefit of a judgment as an estoppel upon his adversary is one who would have been prejudiced by a contrary decision in the earlier case." Sosebee v. Alabama Farm Bureau Mut. Cas. Ins. Co., 56 Ala. App. 334, 336, 321 So. 2d 676, 678 (Civ. App. 1975).

However, the requirement that the parties be identical is subject to exception. Our supreme court has explained:

"Our caselaw requires that "there is a substantial identity of parties in the two actions." Ex parte Ford Motor Credit Co., 772 So. 2d 437, 440 (Ala. 2000). ... "'An exception is made to this requirement for parties in privity with a party to the prior action.'" Stewart[v. Brinley], 902 So. 2d [1,] 10 [(Ala. 2004)] (quoting McMillian[v. Johnson], 878 F. Supp. [1473,] 1520 [(M.D. Ala. 1995)]) (emphasis omitted). A party is deemed to be in privity with a party to a prior action when there is "'an identity of interest in the subject matter of litigation."'" Stewart, 902 So. 2d at 11 (quoting Hughes v. Martin, 533 So. 2d 188, 191 (Ala. 1988), quoting in turn Issue Preclusion in Alabama, 32 Ala. L. Rev. 500, 521 (1981)).

"'....

"This Court has stated: "''A person may be bound by a judgment even though not a party to a suit if one of the parties to the suit is so closely aligned with his interests as to be his virtual representative.'"'" Gonzalez, LLC v. DiVincenti, 844 So. 2d 1196, 1203 (Ala. 2002) (quoting Green v. Wedowee Hosp., 584 So. 2d 1309, 1315 ([Ala.] 1991), quoting other cases).'"

Ex parte Webber, 157 So. 3d 887, 895 (Ala. 2014) (quoting Greene v. Jefferson Cnty. Comm'n, 13 So. 3d 901, 912 (Ala. 2008)).

We begin by considering whether Whitworth and Lando established that they are parties in privity with the homeowners' association, the defendant in the 2020 action. In their 2025 dispositive motion, Whitworth and Lando stated that "there is no question that the identity of interests ... are the same" between them and the homeowners' association. They appear to rest that assertion on their stated belief that the "goal" of the 2020 action and the 2025 complaint are the same -- "to prevent noise [that the Beaulieu family] claim[s] emanates from the pool area."

Although Whitworth and Lando are correct that the claims in the 2020 action and in the 2025 complaint both arise from conduct that created noise at the pool, the 2020 action sought to reduce or eliminate that noise through an injunction against the homeowners' association, whose corporate entities owned and operated the pool; however, the 2025 complaint sought damages from two individuals, who happened to be using the pool, based on conduct and comments that they had directed toward Beaulieu. Whitworth and Lando were not parties to the 2020

action, and we find no basis for determining that they were in privity with the homeowners' association. The mere fact that conduct like that in which Beaulieu alleged Whitworth and Lando had engaged formed the basis for the factual allegations that the pool, as it was being operated, created a private nuisance does not create an identity of interests between the homeowners' association on the one hand and Whitworth and Lando on the other. The 2020 action did not adjudicate whether any person had engaged in any untoward conduct at the pool, much less adjudicate whether the alleged conduct of Whitworth and Lando, which formed the basis of the claims in the 2025 complaint, had occurred. Notably, had the result in the 2020 action been different, Whitworth and Lando, who would have been strangers to that judgment, would not have been required to perform any act required by that judgment. See Sosebee, 56 Ala. App. at 336, 321 So. 2d at 678. Therefore, Whitworth and Lando have not established that they are in privity with the homeowners' association, and they therefore have not established that the doctrines of res judicata or collateral estoppel can serve as a bar to the claims in the 2025 complaint.

Whitworth and Lando failed to establish, as they were required to do, see American Tr. Corp., 793 So. 2d at 813, a prima facie case that the defenses of res judicata or collateral estoppel applied to bar the claims in the 2025 complaint. Whitworth and Lando failed to establish that they are in privity with the homeowners' association, and, therefore, they cannot rely on the doctrines of res judicata and collateral estoppel to use the judgment entered in the 2020 action to bar the claims in the 2025 complaint. Likewise, Whitworth and Lando have failed to establish that the 2024 dismissal order, which is not a judgment on the merits, can serve as a procedural bar to the claims in the 2025 complaint under either doctrine. Accordingly, we reverse the 2025 judgment finding the claims in the 2025 complaint to be barred by the 2024 dismissal order and the 2020 judgment, and we remand the cause for reinstatement of the 2025 complaint and for further proceedings.⁷

REVERSED AND REMANDED WITH INSTRUCTIONS.

Moore, P.J., and Hanson, Fridy, and Bowden, JJ., concur.

⁷In reversing the judgment, we express no opinion on the merits of Beaulieu's claims against Whitworth and Lando, because the viability of those claims is not presented in this appeal.