Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2020-227

MAY TERM, 2021

Garrett Cornelius* v. State of Vermont	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 224-8-19 Oscv
		Trial Judge: Robert R. Bent

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the dismissal of his lawsuit against the State alleging that he was unlawfully seized, in violation of Article 11 of the Vermont Constitution. We affirm.

The facts are not in dispute. In October 2016, and then again in December 2016, plaintiff was charged as an accessory aiding in the commission of a felony, in violation of 13 V.S.A. § 3, by providing support for his brother at his residence after his brother absconded from furlough, in violation of 13 V.S.A. § 1501(b)(1). The criminal division initially imposed bail in the amount of $10,000 and set conditions of release. The bail was later reduced, and, in April 2017, a single justice of this Court vacated plaintiff's conditions of release and released him on his personal recognizance. See State v. Cornelius, No. 2017-055, 2017 WL 2199159, at *2 (Vt. Apr. 6, 2017) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo17-055.bail_.pdf [https://perma.cc/KC7A-HZDD]. After the case was remanded to the criminal division, the State dismissed the charges against plaintiff.

In December 2018, plaintiff filed a civil suit against the Orleans County State's Attorney, alleging abuse of process based on her role in prosecuting him. He alleged that he was improperly charged with aiding in the commission of a felony, incarcerated for thirty-three days, and subjected to onerous conditions of release as a result of the State's Attorney's actions. The civil division dismissed the suit on grounds of absolute immunity, notwithstanding plaintiff's argument that he was suing the State's Attorney in her individual capacity. A three-justice panel of this Court affirmed the civil division's decision to dismiss the suit, concluding that the facts alleged in plaintiff's complaint demonstrated as a matter of law that he was suing the State's Attorney for actions associated with the filing of criminal charges, which are "shielded from civil liability by absolute immunity." Cornelius v. Barrett-Hatch, No. 2019-117, 2019 WL 3761430, *2 (Aug. 7, 2019) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo19-117.pdf [https://perma.cc/2VMC-QRQ3].

In August 2019, less than three weeks after this Court affirmed the dismissal of his suit on grounds of absolute immunity, plaintiff filed another suit, this time against the State, alleging that the State's Attorney unlawfully seized him in violation of Article 11 of the Vermont Constitution.

The civil division granted the State's motion to dismiss the suit, concluding that plaintiff failed to plead all the elements of an Article 11 claim pursuant to Zullo v. State, and, further, that dismissal was warranted under the doctrine of claim preclusion. 2019 VT 1, 209 Vt. 298.

On appeal, plaintiff argues that he alleged each of the elements of a claim pursuant to Zullo and that his suit is not barred by the doctrines of claim preclusion or absolute immunity. We conclude that the doctrine of claim preclusion bars plaintiff's suit; therefore, we do not address the other issues raised in this appeal.

Whether claim preclusion "applies to a given set of facts is a question of law," which we review without deference to the trial court's decision on the issue. Faulkner v. Caledonia Cty. Fair Ass'n, 2004 VT 123, ¶ 5, 178 Vt. 51 (quotation omitted). "In reviewing a trial court's grant of a motion to dismiss, this Court accepts as true all factual allegations pleaded in the complaint and draws all reasonable inferences from those facts." Id. (quotations omitted).

"Under the doctrine of claim preclusion, a final judgment in previous litigation bars subsequent litigation if the parties, subject matter, and cause(s) of action in both matters are the same or substantially identical." Id. ¶ 8. "The doctrine applies both to claims that were or should have been litigated in the prior proceeding." Id. "Identity of parties exists where the parties or their privies are involved in both actions." Lamb v. Geovjian, 165 Vt. 375, 380 (1996). "A privity relationship generally involves a party so identified in interest with the other party that they represent one single legal right." Id. (quotation omitted). "In determining whether two causes of action are sufficiently similar for claim preclusion purposes, this Court has focused on whether the same evidence will support both of them." Faulkner, 2004 VT 123, ¶ 11.

Plaintiff argues that claim preclusion does not bar his second suit because his first suit was against the State's Attorney in her individual capacity for abuse of process, which he contends he filed to exhaust every meaningful alternative remedy in satisfaction of the second element of a Zullo claim, while his second suit involved an Article 11 claim pursuant to Zullo. Hence, he contends that claim preclusion does not apply here because (1) the parties are not substantially identical insofar as the state's attorney, in her individual capacity, is not in privity with the State; and (2) even if the parties could be considered substantially identical, the causes of action are not substantially identical.[*]

We disagree. Regarding whether there was privity between the state's attorney and the State, although "a public official sued in her individual capacity is generally not considered to be in privity with the government for purposes of res judicata," that is not true, as in this case, "when a party is sued as an individual for actions taken solely in her official role." Lamb, 165 Vt. at 380; see also Cohen v. Shea, 788 F. Supp. 66, 68 (D. Mass. 1992) (holding that claim preclusion barred plaintiff's employment discrimination claims under 42 U.S.C. § 1983 against various individuals and a municipality where plaintiff did not raise the claims as a counterclaim in municipality's state court appeal of the administrative determination favoring plaintiff); Brown v. Osier, 628 A.2d 125, 129 (Me. 1993) (affirming dismissal of individually named defendants based on claim preclusion

[*] Plaintiff does not challenge the civil division's determination that dismissal of his first suit based on absolute immunity was a final judgment on the merits for purposes of claim preclusion. See Federated Dep't Stores v. Moitie, 452 U.S. 394, 399 n.3, 402 (1981) (determining that dismissal for failure to state claim upon which relief can be granted is judgment on merits to which res judicata applies); see also Bell v. Hood, 327 U.S. 678, 682 (1946) (stating that whether plaintiff failed to state claim upon which relief can be granted is question of law that is resolved by judgment on merits).

where plaintiff did not allege in suit against public officials in their individual capacities any acts "separate and apart from acts done in their supervisory authority").

Regarding whether the causes of action were substantially identical, plaintiff's claims in both suits are based on precisely the same actions taken by the state's attorney and thus are supported by the same evidence. The only difference is that plaintiff based his second suit on a different legal theory with potentially different forms of relief. "[T]he current Restatement's approach precludes a second lawsuit arising out of the same transaction as a prior lawsuit even where the second action will include 'evidence or grounds or theories of the case not presented in the first action, or . . . remedies or forms of relief not demanded in the first action.' " Faulkner, 2004 VT 123, ¶ 14 (alteration in original) (quoting Restatement (Second) of Judgments § 25 (1982)); see also 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure: Jurisdiction § 4408 (3d ed. 2021) ("In most circumstances, claims growing out of the same transaction are . . . precluded even though an effort is made to advance new theories or to substitute new remedies.").

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

William D. Cohen, Associate Justice