

VERMONT SUPREME COURT
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Case No. 2021-097

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

NOVEMBER TERM, 2021

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| Robert Grundstein* v. Lamoille Superior | } | APPEALED FROM: |
| Docket Entries-Orders et al. | } | |
| | } | Superior Court, Washington Unit, |
| | } | Civil Division |
| | } | CASE NO. 383-12-20 Wncv |
| | } | Trial Judge: Robert R. Bent |

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

Plaintiff appeals the superior court's order dismissing his case. We affirm.

Plaintiff has been involved in litigation in the Lamoille Superior Court Civil Division with his siblings over the partition of a lakefront camp. Several prior decisions from this Court detail the history of this litigation. See Levin v. Grundstein, No. 2008-417, 2009 WL 2427820 (Vt. Mar. 5, 2009) (unpub. mem.), <https://www.vermontjudiciary.org/sites/default/files/documents/eo08-417.pdf> [<https://perma.cc/5Q82-K8XV>]. In brief, those decisions reflect the following. Plaintiff was assigned the lakefront property and ordered to pay sums to each sibling for their interest in the property. Plaintiff did not provide the payments, interfered with the sale, and his siblings sought injunctive relief. The superior court ordered plaintiff to vacate the property and to not interfere with the sale. On appeal, this Court affirmed in March 2009. Id. at *2. Plaintiff violated the injunction by not vacating the property. He was subsequently held in contempt and this Court affirmed the contempt on appeal. Levin v. Grundstein, No. 2009-254, 2010 WL 1266673 (Vt. Apr. 1, 2010), <https://www.vermontjudiciary.org/sites/default/files/documents/eo09-254.pdf> [<https://perma.cc/6S6R-WKFP>]. In subsequent litigation, the trial court concluded that plaintiff had engaged in malicious prosecution and awarded siblings damages and attorney's fees. This Court modified the amount of judgment and affirmed in all other respects. Grundstein v. Levin, No. 2016-242, 2017 WL 571272 (Vt. Feb. 1, 2017), <https://www.vermontjudiciary.org/sites/default/files/documents/eo16-242.pdf> [<https://perma.cc/7N5D-W2PE>].

In December 2020, plaintiff filed this action naming as defendants several docket entries in two different superior court actions, the Lamoille superior court clerk, and the Lamoille

superior court. Plaintiff requested declaratory relief, seeking to vacate an order from June 2016. The trial court granted defendants' motion to dismiss, concluding that docket entries are not legal entities subject to suit and that plaintiff was attempting to collaterally challenge final judgments. Plaintiff appeals.

On appeal, plaintiff argues that some orders were entered without due process and therefore res judicata does not apply and he has a right to challenge the existing final orders. The State responds that the named defendants are not proper parties and that plaintiff's claims are precluded.

We review decisions on a motion to dismiss without deference and "under the same standard as the trial court and will uphold a motion to dismiss for failure to state a claim only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Birchwood Land Co. v. Krizan, 2015 VT 37, ¶ 6, 198 Vt. 420 (quotation omitted).

We conclude that even if the named defendants were cognizable to suit, this case was properly dismissed because plaintiff is attempting to bring an impermissible collateral challenge to final orders. Once there is a final judgment, parties are barred by res judicata from litigating the same matter. See Carlson v. Clark, 2009 VT 17, ¶ 13, 185 Vt. 324. Here, the docket entries and orders that plaintiff seeks to challenge are part of concluded and final proceedings, and therefore res judicata applies. In an attempt to sidestep res judicata, plaintiff has sued the legal proceedings themselves instead of the other parties to the original suit. "A collateral attack is one questioning the validity of a judgment in a proceeding which is not brought for the purpose of modifying, setting aside, vacating or enjoining the judgment." Hixson v. Plump, 167 Vt. 202, 205 (1997) (quotation omitted). Plaintiff has provided no credible basis for a collateral attack on the long-final orders. "It is firmly established that judgments that appear to have been regularly obtained are conclusive upon parties and privies, and cannot be collaterally attacked." Bennett Est. v. Travelers Ins. Co., 140 Vt. 339, 343 (1981), overruled on other grounds by Bevins v. King, 147 Vt. 645 (1986). Here, the record reflects that the orders were obtained through a regular process and there is no basis for a collateral attack.

Affirmed.

BY THE COURT:

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice

William D. Cohen, Associate Justice