

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(City of St. Louis)

**FILED**  
JUN 30 2022  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CIRCUIT CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

CHARLES A. LANE, et al., )  
)  
Plaintiffs, )  
) Cause No. 2122-CC00751  
vs. )  
) Division No. 20  
POLICE RETIREMENT SYSTEM OF )  
THE CITY OF ST. LOUIS, et al., )  
)  
Defendants. )

**ORDER**

The Court has before it Defendant Police Retirement System of the City of St. Louis (“PRS”)’s Motion to Dismiss Plaintiff’s First Amended Petition based on res judicata. The Court now rules as follows.

In Count I of Plaintiff James A. Crawford (“Plaintiff”)’s<sup>1</sup> Amended Petition for Declaratory Judgment and Injunctive Relief, Plaintiff seeks an order and judgment declaring that certain statutory enactments or amendments made after 1981, that Plaintiff alleges require increased pension benefit payments to PRS retirees, to be unlawful, as well as null and void, and in violation of Missouri’s Hancock Amendment, Art. X, § 21 of the Missouri Constitution, and seeks to preliminarily and permanently enjoin the enforcement and payment of such benefits. In Count II, Plaintiff asks the Court to declare that §§ 86.364 and 86.810 RSMo are inapplicable to Plaintiff’s cause of action in Count I, or in the alternative, are invalid, unconstitutional and void. In Count III, Plaintiff asks the Court to declare that Plaintiff has the right to pursue his taxpayer derivative claims for the benefit of the City of St. Louis (“City”) and its taxpayers. Lastly, in Count IV,

<sup>1</sup> The Amended Petition filed on May 19, 2021 was brought by Charles A. Lane and James A. Crawford. On May 20, 2021 Charles A. Lane dismissed his claims in this lawsuit.

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Plaintiff seeks a money judgment against Defendant State of Missouri (“State”) based on proof of restitution damages, and in favor of Plaintiff derivatively on behalf of the City.

PRS has moved to dismiss Plaintiff’s Amended Petition. A motion to dismiss for failure to state a claim is solely a test of the adequacy of the plaintiff’s petition. The Court assumes that all of Plaintiff’s averments are true, and liberally grants to Plaintiff all reasonable inferences therefrom. Bosch v. St. Louis Healthcare Network, 41 S.W.3d 462, 464 (Mo. banc 2001). No attempt is made to weigh any facts as to whether they are credible or persuasive. Instead, the petition is reviewed to see whether the facts alleged meet the elements of a recognized cause of action, or of a cause that might be adopted in that case. State ex rel. Henley v. Bickel, 285 S.W.3d 327, 329 (Mo. banc 2009).

PRS argues that Plaintiff’s claims, made on behalf of the City, are barred by the doctrine of res judicata. PRS argues that the issues in this case were previously raised, or could have been raised, in Neske v. City of St. Louis, 218 S.W.3d 417 (Mo. banc 2007).

Res judicata, or claim preclusion, prevents a party from litigating a claim and then, after an adverse judgment, attempting to relitigate the identical claim in a second proceeding. Chesterfield Village v. City of Chesterfield, 64 S.W.3d 315, 318 (Mo. banc 2002). For res judicata to apply, a final judgment on the merits must have been rendered involving the same claim sought to be precluded in the cause in question. Robin Farms, Inc. v. Beeler, 991 S.W.2d 182, 185 (Mo. App. W.D. 1999). “Claims that could have been raised by a prevailing party in the first action are merged into, and are thus barred by, the first judgment.” Chesterfield Village, 64 S.W.3d at 318. The doctrine precludes the same parties or their privities from later bringing claims arising from the same set of facts that could or should have been pursued in the prior action. Xiaoyan Gu v. Da

Hua Hu, 447 S.W.3d 680, 687 (Mo. App. E.D. 2014). Res judicata applies to affirmative defenses. Xiaoyan Gu, 447 S.W.3d at 688.

For res judicata to apply, four identities must exist: 1) an identity of the thing sued for; (2) an identity of the cause of action; 3) an identity of the persons and parties to the action; and 4) an identity of the quality of person for or against whom the claim is made.” Romeo v. Jones, 86 S.W.3d 428, 432 (Mo. App. E.D. 2002); King General Contractors, Inc. v. The Reorganized Church of Jesus Christ of Latter Day Saints, 821 S.W.2d 495, 501 (Mo. banc 1991).

Res judicata is an affirmative defense and is not self-proving, and therefore, evidence to support the defense must be adduced. E.C.E., Inc. v. Jeffrey, 104 S.W.3d 420, 423 (Mo. App. E.D. 2003)(internal citation omitted). “Where an affirmative defense is asserted in a motion to dismiss, a trial court may dismiss the petition only if the petition clearly establishes ‘on its face and without exception’ that the defense applies and the claim is barred.” Nguyen v. Grain Valley R-5 Sch. Dist., 353 S.W.3d 725, 729 (Mo. App. W.D. 2011)(internal citations omitted); see also Allen v. Titan Propane, LLC, 484 S.W.3d 902, 905 (Mo. App. S.D. 2016).

#### **1. Whether Plaintiff is Bound to the Judgment in Neske.**

PRS argues that although Plaintiff was not a party to Neske, there is an exception regarding suits for or against municipalities and other political subdivisions, when the case involves matters of general interest to all the people within the municipality. PRS argues that it is long-held in Missouri that a judgment against a political subdivision in a matter of general interest to all people, as one respecting the levy and collection of a tax, is binding on all citizens of the political subdivision. PRS argues that Hancock Amendment claims are claims of general or public interest. Therefore, PRS argues that Plaintiff need not be a party to Neske for its judgment to preclude the

present suit. PRS argues that the injuries to the City are wholly derivative of Plaintiff's alleged injuries. PRS contends there is a complete identity of interest, and Plaintiff is bound by the judgment in Neske.

Plaintiff argues that Neske has been overruled because that decision failed to appreciate the City lacked standing to assert a Hancock Amendment argument because it is not a taxpayer. Plaintiff argues that absence of standing deprives a court of subject matter jurisdiction to entertain a claim. Therefore, Plaintiff contends the Neske judgment is void as it adjudicated a claim that the court lacked subject matter to entertain. Plaintiff further argues that the City, a municipal corporation, and James Crawford, an individual taxpayer, are dissimilar parties, and therefore res judicata or virtual representation on the basis of Neske is inappropriate. Plaintiff argues his purported representative in the prior case, the City, was not a taxpayer challenging the post-Hancock statutory increases, it was a political subdivision that not only lacked standing to assert such a claim, it instead futilely attempted to raise the Hancock Amendment as an alternative defense.

The City argues it is clear the City lacked standing to assert the Hancock Amendment as an affirmative defense in Neske. The City argues that preclusive effect should not be accorded based on a legal argument that a party lacked standing to make in the first place. The City argues that its speculative affirmative defense in Neske therefore has no bearing or preclusive effect on the direct Hancock Amendment claims asserted by taxpayers here.

"A party is identical, for purposes of res judicata, when it is the same party that litigated the prior suit or when the new party was in privity with the party that litigated the prior suit." Commonwealth Land Title Ins. Co. v. Miceli, 480 S.W.3d 354, 365 (Mo. App. E.D.

2015)(internal citation omitted). "Privity, as a basis for satisfying the identical party requirement of res judicata, is premised on the proposition that the interests of the party and non-party are so closely intertwined that the non-party can fairly be considered to have had his or her day in court." Id.

Here, the City made a Hancock Amendment argument in Neske as one of its affirmative defenses, and the Missouri Supreme Court found that argument failed. Neske, 218 S.W.3d at 422. However, Neske was overruled "insofar as it suggested that a public entity had standing to raise a Hancock Amendment challenge as a defense to compliance with a statute." Breitenfeld v. Sch. Dist. of Clayton, 399 S.W.3d 816, 826 n.20 (Mo. banc 2013). Hancock Amendment arguments must be raised by taxpayers. Id.; see also King-Willmann v. Webster Groves Sch. Dist., 361 S.W.3d 414 (Mo. banc 2012). Accordingly, the City did not have standing to raise its Hancock Amendment arguments in Neske. If the City did not have standing to raise the Hancock Amendment argument in Neske, as found in King-Willmann and Breitenfeld, then it is hard to see how that decision could bind all taxpayers of the City.

The Court finds that PRS has not demonstrated the third and fourth identities of res judicata exist in this case, the identity of the persons and parties to the action, and the identity of the quality of person for or against whom the claim is made.

## **2. Whether Neske Precludes Plaintiff's Claims.**

Next, PRS also argues the first identity between Neske and Plaintiff's Amended Petition is satisfied because Plaintiff seeks a determination that statutes governing the PRS constitute an unfunded mandate in violation of the Hancock Amendment. PRS contends the City sought the same declaration in Neske. PRS argues the second identity is also present because the petition in

Neske and Plaintiff's Petition are based on the same act, contract, and transaction, and Plaintiff's claims here are based on the same "factual basis" as the City's defenses in Neske. PRS argues that the judgment entered by the trial court, and affirmed by the Court of Appeals and Supreme Court, shows that in Neske the factual basis of the City's defenses were the statutes creating the PRS, including their effect on benefits and the actuarial calculation to determine the City's annual payment to the PRS.

Plaintiff argues the issues raised in Neske starkly differ from those implicated by Plaintiff's claims. Plaintiff argues that the statutes at issue here have altered the formula by which the City's required payments to PRS are calculated, and all such enactments have had the effect of increasing PRS's liabilities in the form of pension enhancements. Plaintiff argues these mandated responsibilities have increased the City's cost to fund PRS. Plaintiff contends there was no argument or analysis in Neske regarding the Hancock Amendment implications of these statutes enacted or amended after 1981 and identified in Plaintiff's Amended Petition.

The City argues that it did not sue for anything in Neske because the City was a defendant in the case. In addition, the City argues that the identity of the cause of action does not exist.

The "identity of the thing sued for" and the "identity of the cause of action" are actually rooted in the same central question: "what is the 'thing'—the claim or cause of action—that has previously been litigated?" Epice Corp. v. Land Reutilization Auth. of St. Louis, 608 S.W.3d 725, 730 (Mo. App. E.D. 2020). "The answer to that question depends on whether the 'operative facts'—those facts that give rise to an enforceable right and a basis for the lawsuit—are the same as the previous lawsuit." Id.

Here, "the thing sued for" is not identical in both cases. Identical relief has not been sought

Plaintiff alleges these “Post-Hancock Statutory Mandates” include:

- a statutory provision requiring a refund of member contributions, § 86.253(4) RSMo;
- the institution of the DROP program, §§ 86.320(4) and 86.251 RSMo;
- an increase in the maximum cost of living allowance to 30%, § 86.253(3) RSMo;
- an increase in the maximum service retirement allowance to 75%, § 86.253(1) RSMo; and
- a reduction in the formula/calculation of the final average annual compensation to 2 years, § 86.200(3) RSMo

Plaintiff argues these increased liabilities of PRS had the effect of increasing the City’s required annual payments to fund Defendant PRS. Plaintiff seeks to preliminarily and permanently enjoin the enforcement and payment of such benefits. Plaintiff also requests that the Court enter a money judgment against the State. Accordingly, the present claim does not arise out of the same set of facts as the prior action. The claims in this case do not arise out of the “same act, contract, or transaction” as those claims in Neske.

In sum, the Court finds PRS has not established that the four identities exist, and PRS’s Motion to Dismiss based on res judicata should be denied.

THEREFORE, it is Ordered and Decreed that Defendant Police Retirement System of the City of St. Louis’s Motion to Dismiss is hereby DENIED.

SO ORDERED:

Dated: June 30, 2022

  
JOAN L. MORIARTY, Judge