COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-509

JAMES J. DECOULOS

vs.

COMMONWEALTH & another.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Plaintiff James J. Decoulos appeals from a judgment of the Superior Court dismissing his two-count complaint on res judicata grounds.[2] We affirm.

Background. The claims in Kitras v. Aquinnah, 474 Mass. 132, cert. denied, 137 S. Ct. 506 (2016), and the instant case stem from the same underlying facts. In 1870, residents of the town of Aquinnah "petitioned a probate judge . . . to divide the

[1] Town of Aquinnah.

[2] The Superior Court judge allowed the defendants' joint motion to dismiss in an endorsement on the motion, and also issued a separate memorandum of decision and order (order) providing that "judgment shall enter forthwith dismissing the plaintiff's Amended Complaint with prejudice." A separate judgment, however, was never entered on the docket, and Decoulos filed a notice of appeal from the order. Because the order disposed of the entire case below, the parties treated it as a final judgment, and the parties have not been prejudiced, "we treat the appeal as if judgment had entered." Sarkisian v. Concept Restaurants, Inc., 471 Mass. 679, 681 n.3 (2015).

common land for the residents to hold in severalty." [3] Id. at 137-138. The appointed commissioners completed the partition in 1878, creating over 500 lots, none of which included "an express easement of access." Id. at 138. "As a result, the majority of lots divided from the common land were landlocked." Id.

Decoulos and his family purchased a number of these lots as co-trustees of three trusts. Kitras revolved around the co-trustees' attempts to gain access rights over others' property to their lots, by establishing easements by necessity. Kitras, 474 Mass. at 139. Easements by necessity arise, if at all, at the time of the conveyance that renders the parcel landlocked, if the parties so intended. Id. "There is no public policy that creates an easement by necessity to make land accessible," and "[i]t is a purchaser's 'own folly' that he purchased land that had no access to some or all of the land 'and he should not burden another with a way over his land, for his convenience.'" Id., quoting Orpin v. Morrison, 230 Mass. 529, 533-534 (1918). The Supreme Judicial Court ultimately held that "the plaintiffs failed to meet their burden of establishing that the commissioners intended to create easements by necessity." Kitras, supra at 146.

[3] A detailed history of the property is set out in Kitras and in Decoulos v. Town of Aquinnah, U.S. Dist. Ct., No. 17-CV-11532-ADB (D. Mass. July 24, 2018).

Since Kitras was decided, Decoulos has taken individual title to much of the property of the trusts involved in Kitras. In 2019, he filed the complaint in this action alleging that the defendants have eliminated "previously existing property rights" and denied access to his land and, thereby, have effected temporary and permanent takings of his property in violation of G. L. c. 79, § 1, and art. 10 of the Massachusetts Declaration of Rights. The defendants moved to dismiss on several grounds. Holding that the plaintiff's claim was precluded by the Supreme Judicial Court's decision in Kitras, the judge dismissed the complaint.

Discussion. We review the allowance of a motion to dismiss de novo, accepting the allegations in the complaint as true and drawing all reasonable inferences in the plaintiff's favor. Baptiste v. Executive Office of Health & Human Servs., 97 Mass. App. Ct. 110, 114 (2020). Res judicata is a term that includes both claim preclusion and issue preclusion. See Santos v. U.S. Bank Nat'l Ass'n, 89 Mass. App. Ct. 687, 692 (2016).

The doctrine of claim preclusion "makes a valid, final judgment conclusive on the parties and their privies." Santos, 89 Mass. App. Ct. at 692. "The general rule of issue preclusion provides that '[w]hen an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is

conclusive in a subsequent action between the parties,[4] whether on the same or a different claim.'" Fireside Motors, Inc. v. Nissan Motor Corp. in U.S.A., 395 Mass. 366, 372 (1985), quoting Restatement (Second) of Judgments § 27 (1982).

Decoulos argues that his claims are not barred by res judicata because the instant case includes takings claims, whereas Kitras was limited to determining whether an easement by necessity existed. We disagree. Even assuming that Decoulos was not required to bring his takings claim at the same time he sought to establish easement rights, principles of issue preclusion still preclude his takings claim. As the Superior Court judge noted, the Supreme Judicial Court's decision in Kitras "eradicated any claim of a taking by holding that a prior existing easement by necessity never was intended by the grant of the land at issue here, and therefore never existed." See Kitras, 474 Mass. at 146. Accordingly, Decoulos never had the property right he contends the town or the Commonwealth "took."[5]

---

[4] Decoulos's complaint asserts that the town and the Commonwealth were defendants in Kitras. Even if they were not, issue preclusion also prevents a party, who had a full and fair opportunity to litigate the issue in a prior action, from relitigating the issue with another person or entity. See Fireside Motors, Inc. v. Nissan Motor Corp. in U.S.A., 395 Mass. 366, 373 (1985).

[5] Decoulos relies on Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Protection, 560 U.S. 702 (2010) (plurality opinion) to support his proposition that the Kitras decision constituted a judicial taking; however, this reliance is misplaced. While recognizing that a judicial decision that

See Decoulos v. O'Keefe, 95 Mass. App. Ct. 1102 (2019) (addressing takings claim relative to lot 557 of partitioned property, and holding that, under Kitras, lot 557 did not have easement by necessity, thus Decoulos never had property right that defendants could have taken).[6] However much Decoulos may disagree with the Supreme Judicial Court's decision in Kitras, it is binding on him and the Superior Court correctly applied the doctrine of stare decisis. Taylor v. Beaudry, 82 Mass. App. Ct. 105, 112 n.8 (2012).

Where an essential element of his takings claims is absent, Decoulos has failed to "plausibly suggest" entitlement to relief. Galiastro v. Mortgage Elec. Registration Sys., Inc., 467 Mass. 160, 164 (2014). The judge correctly dismissed the complaint.[7]

---

eliminates established property rights could constitute a taking, Stop the Beach Renourishment, Inc., 560 U.S. at 715, the Supreme Court concluded that the plaintiff had not established the claimed property right. Id. at 732. "The Takings Clause only protects property rights as they are established under state law, not as they might have been established or ought to have been established." Id. See Gentili v. Sturbridge, 484 Mass. 1010, 1012 (2020) ("Inherent in a government's taking of private property is a right in the property that the government has commandeered; there can be no 'taking' if there is no right").

[6] Though Decoulos claims that this case does not involve lot 557, he does not argue that the property at issue here was not involved in the Kitras case.

[7] Decoulos additionally argues that Kitras imposed a grossly unreasonable restraint on alienation by claiming that easements were only intended for the original grantees; however, we are bound by the principles of stare decisis to follow and apply the

The Town of Aquinnah's request for appellate attorney's fees and costs is denied.

Judgment affirmed.

By the Court (Sullivan, Desmond & Singh, JJ.[8]),

Joseph F. Stanton

Clerk

Entered: September 2, 2021.

holdings of the Supreme Judicial Court. See Commonwealth v. Vasquez, 456 Mass. 350, 356 (2010).

[8] The panelists are listed in order of seniority.