

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-13-709

ANTHONY ROSE

APPELLANT

V.

JOEL ANDREW NUTT

APPELLEE

Opinion Delivered November 20, 2013

APPEAL FROM THE BENTON
COUNTY CIRCUIT COURT
[NO. CV-13-312]

HONORABLE JOHN R. SCOTT,
JUDGE

AFFIRMED

ROBIN F. WYNNE, Judge

Anthony Rose, acting pro se, appeals from an order of the Benton County Circuit Court that granted Joel Nutt's motion to dismiss Anthony's complaint and ordered him to pay Joel \$1250 in attorney's fees. He argues on appeal that the trial court erred by ruling that his claim was barred by collateral estoppel and by awarding Joel attorney's fees. We affirm.

Anthony is married to Rene Rose, Joel's ex-wife, and is the stepfather of the two children born of that marriage. On March 5, 2013, Anthony filed a complaint against Joel in which he alleged that Joel had failed to pay a debt owed to him for payment of unspecified medical and prescription bills. The alleged debt was for medical and prescription expenses incurred by Rene and Joel's minor children. The complaint references an agreed order regarding the expenses that had been entered on or about February 27, 2013. Joel filed a motion to dismiss Anthony's complaint on March 26, 2013. In the motion, Joel alleged that

an agreed order had been entered in an existing domestic-relations case between him and Rene Rose that addressed medical bills for the children. Joel also raised the affirmative defenses of res judicata, issue preclusion, collateral estoppel, and judicial estoppel. Joel attached to the motion a copy of an agreed order entered by the domestic-relations division of the Benton County Circuit Court on February 27, 2013. Paragraph seven of the agreed order states, “Plaintiff and Defendant agree that as of this date, neither party owes the other for any outstanding medical bills incurred by the minor children.”

Anthony appeared pro se at the hearing on the motion to dismiss, and Joel appeared represented by counsel. Following the hearing, which consisted solely of argument by Anthony and by Joel’s attorney, the trial court entered an order in which it found that Anthony’s complaint was barred by the legal doctrines of collateral estoppel and issue preclusion and granted the motion to dismiss. This timely appeal followed.

Anthony argues in his brief that the trial court erred by granting the motion to dismiss because his claim is not barred by collateral estoppel or issue preclusion. Under issue preclusion (collateral estoppel), a decision by a court of competent jurisdiction on matters which were at issue, and which were directly and necessarily adjudicated, bars any further litigation on those issues by the plaintiff or his privies against the defendant or his privies on the same issue. *Crockett v. C.A.G. Invs., Inc.*, 2011 Ark. 208, 381 S.W.3d 793. Collateral estoppel requires four elements before a determination is conclusive in a subsequent proceeding: (1) the issue sought to be precluded must be the same as that involved in the prior litigation; (2) the issue must have been actually litigated; (3) the issue must have been

determined by a valid and final judgment; and (4) the determination must have been essential to the judgment. *Foster v. Foster*, 96 Ark. App. 109, 239 S.W.3d 1 (2006).

Anthony argues that he and Rene were not in privity for the purpose of the medical expenses. We disagree. Privity exists when two parties are so identified with one another that they represent the same legal right. *Jayel Corp. v. Cochran*, 366 Ark. 175, 234 S.W.3d 278 (2006). Anthony is married to Rene. The funds alleged to have been spent were for the benefit of Rene's children, and Rene had the ability to seek reimbursement from Joel as part of the domestic-relations case. In filing this action, Anthony is effectively attempting to recover funds on behalf of Rene. Thus, for the purpose of these medical expenses, Anthony and Rene are in privity.

Anthony also complains that the granting of the motion to dismiss was in error because he had not yet been granted his day in court. Because he and Rene were in privity on this issue, he is mistaken. The medical expenses at issue had been incurred at the time the agreed order was entered and were explicitly part of the litigation between the parties in the domestic-relations case. The agreed order was a valid, final judgment, and the finding by the circuit court that neither party owed any medical debt for the children was essential to that issue. Therefore, all of the elements for collateral estoppel were met in this case. The trial court did not err by granting the motion to dismiss.

Anthony next argues that the trial court erred by awarding Joel attorney's fees. The prevailing party in a civil action to recover for breach of contract may be allowed a reasonable attorney's fee. Ark. Code Ann. § 16-22-308 (Repl. 1999). Anthony does not argue that the

fee awarded was not reasonable. Although he acknowledges that Arkansas Code Annotated section 16-22-308 allows an award of attorney's fees in litigation over an alleged breach of contract, as was alleged here, Anthony argues that Joel was not a prevailing party. He is mistaken. Anthony sued Joel for breach of contract. Joel prevailed in dismissing the complaint under the theory of collateral estoppel. Therefore, Joel was the prevailing party, and the award of fees was not in error.

Finally, Anthony argues that the agreed order should be voided and rewritten because it refers to two men as "husband" to each other. The agreed order does refer to Andy Dyer as Joel's "husband," however, this reference has no bearing on the issue of the medical expenses and provides no basis to void the agreed order.

Affirmed.

PITTMAN and HARRISON, JJ., agree.

Anthony Rose, pro se appellant.

No response.