If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF JANET KAPP, by MILA KAPUSTA, Personal Representative, Plaintiff-Appellant,	UNPUBLISHED November 24, 2020
v	No. 350675 Oakland Circuit Court LC No. 2019-171448-CZ
LORRIE KAPP, also known as LORRIE J. KAPP, also known as JANET LORRAINE KAPP, also known as JANET L. KAPP, Defendant-Appellee.	

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

In this action for fraud and conversion, plaintiff, the estate of Janet Kapp, appeals as of right the circuit court's order granting summary disposition under MCR 2.116(C)(7) (claim barred by prior judgment) in favor of defendant Lorrie Kapp. We affirm.

I. BACKGROUND

Mila Kapusta and Lorrie Kapp are both daughters of Janet and Milan Kapp. Janet passed away in November 2017. In September 2017, a few weeks before their mother's death, Mila brought suit against Lorrie alleging statutory and common law conversion. According to that complaint, from February to November 2016 Lorrie impermissibly withdrew funds from a joint savings account held by Mila and her parents. On Lorrie's motion, the circuit court removed the complaint to the probate court where there were other related matters pending. In March 2018, the probate court dismissed Mila's conversion claims without prejudice because they had not been properly pleaded.

In April 2018, Mila filed a second complaint in circuit court containing the same claims and allegations, and the circuit court again removed the complaint to the probate court. In July 2018, a global settlement was reached as to the various matters pending in the probate court. Relevant to this appeal, Mila's conversion claims against Lorrie were dismissed with prejudice. All of the heirs to the estate or their attorneys consented to the settlement agreement and were

present for the hearing where it was read into the record. An order regarding the settlement was entered in August 2018.

In October 2018, this Court reversed the probate decision to not appoint Mila as Janet's personal representative, which was contrary to Janet's will. *In re Kapp Estate*, unpublished per curiam opinion of the Court of Appeals, issued October 18, 2018 (Docket No. 341871).

In January 2019, Mila filed the instant action as personal representative of Janet's estate. The complaint alleged statutory and common law conversion on the basis of Lorrie's withdrawals from the joint savings account, and also claimed fraud for Lorrie's alleged actions that removed a block on the account. An amended complaint was filed adding allegations that Lorrie took a piano from Janet's home after her death.

In lieu of filing an answer, Lorrie moved for summary disposition under MCR 2.116(C)(7), arguing that the estate was barred from relitigating issues and claims resolved by the 2018 settlement agreement. The circuit court adjourned the first motion hearing and instructed the parties to figure out "what was actually said" at the probate court hearing on the settlement agreement. The circuit court later issued an opinion and order granting Lorrie summary disposition. Having reviewed the probate court hearing and order containing the terms of the 2018 settlement agreement, the circuit court concluded that the estate's claims were barred by res judicata.

II. ANALYSIS

On appeal, the estate argues that res judicata does not preclude the present action because the estate's interests are distinct from the parties who entered into the 2018 settlement agreement.[1]

> The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. This Court has taken a broad approach to the doctrine of res judicata, holding that it bars not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004).]

There is no dispute that the 2018 settlement dismissing Mila's conversion claims against Lorrie was a decision on the merits. *Limbach v Oakland Co Rd Comm'rs*, 226 Mich App 389, 395; 573 NW2d 336 (1997) ("This Court has held that a voluntary dismissal with prejudice acts as an adjudication on the merits for res judicata purposes."). Nor does the estate dispute that its

---

[1] We review de novo a circuit court's decision to grant summary disposition under MCR2.116(C)(7). *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015). We also review de novo the application of legal doctrines such as res judicata. See *Estes v Titus*, 481 Mich 573, 579 NW2d 493 (2008).

instant claims were or could have been resolved in the 2018 case. Thus, the question in this case is whether the second element of res judicata is satisfied.

The estate was not a party to the prior action and so we must determine whether privity exists in this case. "For purposes of res judicata, parties are in privity with each other when they are so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Duncan v Michigan*, 300 Mich App 176, 194; 832 NW2d 761 (2013) (quotation marks and citations omitted). Privity exists when there is "a 'substantial identity of interests' that are adequately presented and protected by the first litigant." *Adair*, 470 Mich at 122.

As personal representative, Mila must "act[] reasonably for the benefit of interested persons," MCL 700.3715(1), which includes the heirs to the estate, MCL 700.1105(c). However, all of the heirs were represented by counsel in the settlement negotiations in the probate court that resulted in the dismissal with prejudice of Mila's conversion claims against Lorrie. Further, Janet's guardian and conservator and his attorney approved of the settlement agreement. The estate has not identified an interested party who was not involved in the settlement negotiations. Thus, all those with an interest in the estate were aware of Mila's claims against Lorrie and agreed to resolve that dispute as part of the global settlement. In sum, as it pertains to the claims against Lorrie, the estate itself has no interest distinct from the combined interests of those who consented to the 2018 settlement agreement. For these reasons, we conclude that the estate was adequately represented in the prior action.

The estate also argues that res judicata does not apply because the estate did not exist at the time the heirs reached their settlement agreement. However, the estate provides no legal authority supporting for this position, and, to the contrary, we have held that there was a privity of interest between the decedent's guardian and personal representative, who acquired his interest after the decedent's death. *Matter of Estate of Koernke*, 169 Mich App 397, 399-400; 425 NW2d 795 (1988). The estate's argument that heirs of an estate cannot legally bind an estate also misses the mark. We do not hold that heirs can bind an estate, but rather that, under the circumstances of this case, the heirs adequately represented the estate's interests for purposes of res judicata.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro