

STATE OF MICHIGAN
COURT OF APPEALS

CONNER T. FIELD and ALLISON M. FIELD,

Plaintiffs-Appellees,

v

SEAN DEVROU and ASSOCIATED BANK, N.A.,

Defendants,

and

ANGELA MARIE DEVROU,

Defendant-Appellant.

UNPUBLISHED

December 22, 2020

No. 351149

Kalamazoo Circuit Court

LC No. 2018-000205-CH

Before: RONAYNE KRAUSE, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

In this civil action, defendant Angela Marie DeVrou appeals as of right the trial court’s final order granting summary disposition to plaintiffs, Connor and Allison Field. Angela¹ contends on appeal that the trial court erred when it granted partial summary disposition to plaintiffs pursuant to MCR 2.116(C)(7), MCR 2.116(C)(10), and MCR 2.116(I)(2) because collateral estoppel barred plaintiffs’ trespass claim. We affirm.

I. BACKGROUND

As part of the divorce proceedings between Angela and Sean DeVrou, they decided to sell their marital home. Doing so was complicated by foreclosure proceedings initiated by defendant Associated Bank, NA. Doing so was further complicated by the DeVrous’ Marriage Settlement Agreement, the terms of which were not public. Angela contends that under the Marriage Settlement Agreement, she had a right to continue to occupy the home until 21 days after she received a certain settlement payment. The DeVrous’ judgment of divorce was entered on

¹ Because several parties share last names, we will refer to them by their first names as necessary.

February 2, 2018. The Fields entered into a buy-sell agreement for the house on April 21, 2018. Sean and the Fields agreed to a closing date of May 14, 2018. However, according to the Fields, on that date they learned that Angela refused to execute a necessary quit claim deed unless paid \$70,000, a sum that Sean did not have available.

The Fields commenced the instant action for specific performance and to quiet title on May 15, 2018, in the Kalamazoo Circuit Court. On May 16, 2018, Angela allegedly received the settlement payment, and she executed a quit claim deed in favor of Sean. However, Angela contended that pursuant to the Marriage Settlement Agreement, she was entitled to remain in the home for an additional 21 days, until June 6, 2018. On May 17, 2018, the Fields commenced a summary eviction proceeding in the 8th District Court solely against Angela. According to the Fields, Angela managed to delay the summary proceedings. Angela moved out of the home on June 5, 2018; the district court therefore entered a judgment of no cause of action. The Fields discovered that Angela had removed a number of fixtures and other items from the house that allegedly should have been left. The Fields filed an amended complaint in the instant matter, now asserting, in relevant part, a claim for trespass and conversion against Angela.

Angela moved for summary disposition pursuant to MCR 2.116(C)(7), claiming that the judgment of no cause of action in the district court summary proceeding barred the Fields' trespass claim pursuant to the doctrine of collateral estoppel. The trial court denied the motion and, instead, granted partial summary disposition to plaintiffs. Ultimately, the trial court entered final judgments in favor of the Fields as to both trespass and conversion against Angela. This appeal followed. Angela does not challenge the judgment for conversion, but rather only for trespass.

II. STANDARD OF REVIEW AND PRINCIPLES OF LAW

We review de novo a trial court's grant of summary disposition. *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015). "When it grants a motion under MCR 2.116(C)(7), a trial court should examine all documentary evidence submitted by the parties, accept all well-pleaded allegations as true, and construe all evidence and pleadings in the light most favorable to the nonmoving party." *Id.* (quotation marks and citation omitted).²

In *King v Munro*, 329 Mich App 594, 599; 944 NW2d 198 (2019) (quotation marks and citations omitted), we explained the doctrine of collateral estoppel:

The doctrine of collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in that prior proceeding. Generally, application of collateral estoppel requires (1) that a question of fact essential to the judgment was actually

² Angela's proposed standard of review reflects the standard of review for a motion under MCR 2.116(C)(10). During the trial court's hearing on the motion for summary disposition, Angela's counsel explicitly argued that plaintiffs' trespass claim should be dismissed under MCR 2.116(C)(7).

litigated and determined by a valid and final judgment, (2) that the same parties had a full and fair opportunity to litigate the issue, and (3) mutuality of estoppel.

As to the first element, we further explained:

[T]he common ultimate issues must have been both actually and necessarily litigated. To be actually litigated, a question must be put into issue by the pleadings, to the trier of fact, and determined by the trier. In the subsequent action, the ultimate issue to be concluded must be the same as that involved in the first action. The issues must be identical, and not merely similar. [*Id.* at 599-600 (quotation marks and citations omitted; alteration in original).]

Also relevant to this case is the summary proceedings act, MCL 600.5701 *et seq.* The remedy provided under the act is the recovery of possession of the premises. See *JAM Corp v AARO Disposal, Inc*, 461 Mich 161, 168, 170; 600 NW2d 617 (1999). Unusually, such claims for recovery of possession of property do not require joinder of all other claims. *Id.* at 168-169. Consequently, a final judgment in a summary proceeding has no res judicata or collateral estoppel effect on any other claims. MCL 600.5750; *JAM Corp*, 461 Mich at 168-169; *Sewell v Clean Cut Mgt*, 463 Mich 569, 575-576; 621 NW2d 222 (2001).

III. ANALYSIS

No actual adjudication could have occurred in the district court summary proceeding, and the district court's final judgment did not resolve whether Angela was a trespasser.

The only claim at issue would have been for present recovery of the premises. By the time the trial court entered its order, Angela had already moved out of the home. As a consequence, the district court could not have ordered Angela to leave or fashioned any other kind of remedy granting the Fields the right to immediate possession. If a court cannot fashion any practical relief, an issue is moot, and, subject to narrow exceptions not present, the court is obligated to dismiss the matter without deciding it. *People v Richmond*, 486 Mich 29, 34-35; 782 NW2d 187 (2010). Strictly speaking, a "final judgment" need not have been an adjudication on the merits. See *Radawan v Ameriprise Ins Co*, 327 Mich App 159, 167-172; 933 NW2d 385 (2018). However, we agree with the United States Supreme Court that where a party unilaterally precluded the issue from even being litigated by rendering the issue moot, that party should not "then retain the benefit of the judgment." *Azar v Garza*, ___ US ___, ___; 138 S Ct 1790, 1792; 201 L Ed 2d 118 (2018) (quotation omitted). Angela unilaterally precluded the summary possession claim from even being justiciable, and allegedly she intentionally delayed the proceedings to ensure that the claim would be moot. Under the circumstances, we think there cannot have been a true "final judgment" in the district court matter for purposes of collateral estoppel.

However, even if the district court entered a true final judgment, the summary proceedings did not address the trespass issue. Rather, as noted, the only purpose of the summary proceedings was to determine whether the Fields had a present right to recover possession of the property. That would not have addressed whether Angela had been trespassing at the commencement of the instant proceeding, or whether any such trespass caused the Fields any damages. Again, a determination of whether the Fields had a right to recover possession of the property has no

preclusive effect on any other claims. MCL 600.5750; *JAM Corp*, 461 Mich at168-169; *Sewell v Clean Cut Mgt*, 463 Mich 569, 575-576; 621 NW2d 222 (2001). Furthermore, the district court's judgment did *not* check the box for the holding that defendant had a right to retain possession. Thus, there could not even have been an implicit determination of whether Angela had a right to be in the home.

The trial court correctly determined that the district court summary possession proceedings had no collateral estoppel effect upon the Fields' trespass claim. Affirmed. The Fields, being the prevailing parties, may tax costs. MCR 7.219(A).

/s/ Amy Ronayne Krause

/s/ Jane E. Markey

/s/ Stephen L. Borrello