

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

Kathy Jackson, :
 : C.A. No. 07-11-0045AP
 :
 Plaintiff below/ :
 Appellant, :
 :
 v. :
 :
 Nancy Pikulik, :
 :
 Defendant below/ :
 Appellee. :

Decision on Defendant's Motion to Dismiss

Submitted: December 18, 2007

Decided: December 18, 2007

Defendant's motion to dismiss is granted.

Kathy Jackson, 409 Black Diamond Road, Smyrna, Delaware 19977, Pro Se Appellant.

Nancy Pikulik, 4664 Sandy Bend Road, Marydel, Delaware 19964, Pro se Appellee.

Trader, J.

In this civil appeal from the Justice of the Peace Court, the plaintiff's claim for reimbursement for 150 bales of hay and a veterinarian's fee is barred by the doctrine of collateral estoppel.

Relevant Facts and Procedural History

In November 2005, Kimberly Rife made an agreement with the defendant, Nancy Pikulik, whereby Rife would deliver two horses to the defendant's boarding stable and the defendant would be responsible for the care and custody of the horses. The horses were returned to Rife on October 20, 2006, at which time she signed a statement that the horses were properly cared for and were received by her in good health. On November 29, 2006, the defendant filed a civil action in the Justice of the Peace Court #16 against Kimberly Rife for monies owed her for of the care and custody of the horses. On December 22, 2006, Kimberly Rife filed a counterclaim for \$24,597.90, which included a claim of \$712.50 for 150 bales of hay. Trial was scheduled for February 22, 2007. Kimberly Rife requested a continuance because she was leaving for veterinarian school and would be out of the country for two and one-half years except for a two week break on August 19, 2007. The Magistrate denied the request because he concluded that the length of the continuance was unreasonable. Kimberly Rife did not appear on the day of trial, but Kathy Jackson, Kimberly Rife's mother, appeared in her behalf. Ms. Jackson asserted that she was the owner of the horses and the defendant requested that the Court join her as a party to the case. The Justice of the Peace denied the motion for joinder, ruled that the plaintiff could not appear on behalf of Kimberly Rife since she was not an attorney, entered a default judgment against Kimberly Rife for her non-appearance on the date of the trial, and dismissed Rife's counterclaim.

On August 9, 2007, Kimberly Rife filed a motion to vacate the default judgment and this motion was denied by the Justice of the Peace as untimely. Thereafter, Kimberly Rife paid the amount of the default judgment to the defendant.

On August 17, 2007, the plaintiff, Kathy Jackson, filed a civil action seeking monies for the bales of hay in the amount of \$825.00 and a veterinarian bill in the amount of \$180.00. On October 29, 2007, the Justice of the Peace dismissed the plaintiff's claim with prejudice on the grounds that it was a mandatory counterclaim and should have been filed in the previous civil action.

The plaintiff then filed a timely notice of appeal, praecipe, and complaint with this Court. Her petition to proceed in *forma pauperis* was granted by the Court and the defendant filed an answer to the complaint and a motion to dismiss.

The defendant essentially contends that the plaintiff's complaint should be dismissed on the ground of collateral estoppel. I agree.

Collateral Estoppel

The doctrine of collateral estoppel is a "refinement of the doctrine of *Res judicata*," or claim preclusion. *Tyndall v. Tyndall*, 238 A.2d 343, 346 (Del. 1968). Collateral estoppel "is designed to provide repose and put a definite end to litigation." *Columbia Cas. Co. v. Playtex FP, Inc.*, 584 A.2d 1214, 1216 (Del. 1991). "Under [the doctrine of collateral estoppel], where a question of fact essential to the judgment is litigated and determined by a valid and final judgment, the determination is conclusive between the same parties in a subsequent case on a different cause of action." *Tyndall*, 238 A.2d at 346 (citing *Petrucci v. Landon*, 9 Terry 491, 494, 107 A.2d 236, 238 (Del. Super. Ct. 1954)(citing Restatement of Judgments § 68)). Essentially, collateral estoppel bars any party to the first case from relitigating in a second case any of the issues of fact

previously adjudicated. *Betts v. Townsends, Inc.*, 765 A.2d 531, 534 (Del. 2000).

Collateral estoppel serves to “relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication.” *State v. Manista*, 651 A.2d 781, 785 (Del. Fam. Ct. 1994)(citing *Allen v. McCurry*, 449 U.S. 90, 94 (1980)). The burden is on the party raising the collateral estoppel argument to “demonstrate that the issue in relitigation was actually decided in the first proceeding.” *State v. Machin*, 642 A.2d 1235, 1238 (Del. Super. Ct. 1993)(citing *Dowling v. United States*, 493 U.S. 342, 350 (1990)(burden is on defendant to show collateral estoppel component of Double Jeopardy Clause)).

The Delaware Supreme Court has indicated that, in determining if collateral estoppel applies to bar consideration of an issue, a court must determine whether:

(1) [t]he issue previously decided is identical with the one presented in the action in question, (2) the prior action has been finally adjudicated on the merits, (3) the party against whom the doctrine is invoked was a party or in privity with a party to the prior adjudication, and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Betts, 765 A.2d at 535.

Applying the first of the collateral estoppel factors to the facts of this case, I conclude that the issue before me has been previously decided by the Justice of the Peace Court #16. The counterclaim filed by Kimberly Rife in the first action contained the same issue as is set forth in the claim filed by the plaintiff in this Court. Ms. Rife’s counterclaim included a claim for 150 bales of hay and the claim in this Court is also for 150 bales of hay, plus a claim for reimbursement for veterinarian’s fees. The change in the amount in controversy in this Court does not alter the nature of the issue before me. Furthermore, the Justice of the Peace denied Pikulik’s application to join Kathy Jackson as a party to the case. Therefore, he ruled that Ms. Rife, rather than Ms. Jackson was the

real party in interest as to the counterclaim. Therefore, the issue was previously decided by the Justice of the Peace when he dismissed Kimberly Rife's counterclaim.

Secondly, the determination of Rife's counterclaim was a final adjudication on the merits. The counterclaim was dismissed with prejudice for failure to prosecute the claim. Pursuant to Civil Rule 41(b), "[u]nless the Court in its order for dismissal otherwise specifies, a dismissal under this paragraph and any dismissal not provided for in this rule, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to prosecute, operates as an adjudication upon the merits." *Justice of the Peace Civil Rule 41(b)*.

In Delaware, the general rule is that "[a] default judgment normally possesses all the attributes of a final judgment." *Werb v. D'Alessandro*, 606 A.2d 117, 119 (Del. 1992); *See Creative Research Mfg. v. Advanced Bio-delivery, L.L.C.*, 2007 WL 286735, at *11 (Del. Ch. Ct. 2007)(by virtue of a default judgment, a party has succeeded on the merits of its claims). In *Fields v. Frazier*, 2005 WL 3193820, at *2 (Del. Super. Ct. 2005) it was held that as a general rule, a dismissal with prejudice has the effect of a final adjudication on the merits. In the case at bar, the previous dismissal of Rife's counterclaim constituted adjudication on the merits of the present issue.

Turning to the third factor of the collateral estoppel test, I conclude that the plaintiff was in privity with her daughter, Kimberly Rife, the defendant in the first Justice of the Peace case. "Privity is a legal determination for the trial court with regard to whether the relationship between the parties is sufficiently close to support preclusion." *Higgins v. Walls*, 901 A.2d 122, 138 (Del. Super. Ct. 2005)(citing 18 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ 132.04[1][b] (3d ed. 2004)). Further, "[t]he term privity signifies that the relationship between two or more persons is such that a judgment

involving one of them may justly be conclusive on the others, although those others were not party to the lawsuit.” *Id.*

In the present case, although the plaintiff, Ms. Jackson, was not a party to the original suit between Rife and Pikulik, the record supports the conclusion that she was in privity with Rife and, as such, Jackson is estopped from relitigating the issue before the Court. The plaintiff is Rife’s mother and she asserted that Rife entered into a contract in her behalf with the livery stable owner. This agency relationship was not revealed to the defendant until the time of trial when Jackson asserted she was the owner of the horses. Thus, privity is established both by the mother and daughter relationship as well as by the agency relationship between the parties.

Finally, the fourth factor of the collateral estoppel test is also satisfied because the plaintiff, the party against whom the doctrine is raised, had a full and fair opportunity to litigate the prior action by and through her agent Rife. Rife failed to appear at the trial and a default judgment was entered against her. If the mother was the real party in interest in this case, she should have made arrangements for her daughter to appear at trial and testify before the Justice of the Peace. Both the plaintiff and Rife had a full and fair opportunity to litigate the counterclaim before the Justice of the Peace. The plaintiff is therefore bound by the judgment entered against her daughter.

Since I find that this claim is barred by the doctrine of collateral estoppel, plaintiff’s complaint is dismissed.

IT IS SO ORDERED.

Merrill C. Trader