

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES MILLER, as Next Friend to LASHAWN
MILLER, a Minor,

UNPUBLISHED
March 18, 1997

Plaintiff-Appellant,

v

No. 190347
Wayne Circuit Court
LC No. 93-332631-NO

DETROIT BOARD OF EDUCATION, ROSALYN
WHITEHEAD, and GEORGE BUSH,

Defendants-Appellees,

and

ERNEST HORTON,

Defendant.

Before: Bandstra, P.J. and Neff and M.E. Dodge,* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant Detroit Board of Education.¹ We affirm.

Following the order granting full or partial summary disposition to the Board and defendants Whitehead and Bush, plaintiff's remaining claims against Whitehead and Bush, along with all the claims against defendant Horton, proceeded to jury trial. The jury concluded that Lashawn Miller suffered no damages as a result of Horton's conduct. In light of this finding and our conclusion that collateral estoppel applies to prevent further litigation of plaintiff's claims, we find it unnecessary to consider whether the trial court properly granted summary disposition in favor of the Board.

Under "principles of issue preclusion," which are "an aspect of collateral estoppel," a party may estop an adversary from relitigating an issue that has already been litigated in a previous action. *Lichon*

* Circuit judge, sitting on the Court of Appeals by assignment.

v American Universal Insurance Co, 435 Mich 408, 427; 459 NW2d 288 (1990). Ordinarily, under the doctrine of mutuality of estoppel, the party seeking to estop relitigation of an issue “must also have been a party, or a privy to a party, in the previous action.” *Id.* However, “[t]here are several well-established exceptions to the mutuality requirement, such as ... where a master defends by asserting a judgment for a servant.” *Id.* at 428, n 16. This master-servant exception to the mutuality requirement, like the similar principal-agent exception, “is justified by the injustice which would result in allowing a recovery against a defendant for conduct of another, when that other has been exonerated in a direct suit.” *DePolo v Greig*, 338 Mich 703, 711; 62 NW2d 441 (1954) (quoting *Bigelow v Old Dominion Copper Mining & Smelting Co*, 225 US 111, 128; 32 S Ct 641; 56 L Ed 1009 (1912)).

We find these principles applicable here. Plaintiff had a full opportunity to present the claim that Horton’s conduct resulted in damages to Lashawn, but the jury concluded that no damages resulted. Plaintiff’s claim against the Board is based entirely on his claim that Horton’s conduct caused damage to Lashawn, the Board being responsible for Horton’s conduct under various theories of law.² It would be unjust to allow “a recovery against [the Board] for conduct of [Horton], when [Horton] has been exonerated [from damages liability] in a direct suit.” See *id.*

We affirm.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge

¹ Although summary disposition was partially granted to other defendants as well, plaintiff’s statement of the questions presented and arguments apply only to defendant Board of Education. In any event, our conclusion regarding the effect of collateral estoppel on this matter would apply to all defendants equally.

² Plaintiff attempts to avoid this conclusion by arguing that Lashawn suffered damages because the Board failed to prevent Horton’s offensive conduct, even though she suffered no damage as a result of the conduct itself. The argument here, apparently, is that Lashawn was offended and compensably damaged by the Board’s failure to fulfill its duty to stop Horton, even though what Horton did resulted in no compensable injury. We find this argument strained, at best, and conclude that no reasonable juror could make this finding. Further, this claim is belied by the fact that, throughout the pleadings and proceedings below, plaintiff never alleged damages directly resulting from the Board’s conduct, but only alleged that the Board was vicariously liable for damages resulting from Horton’s conduct.