STATE OF MICHIGAN

COURT OF APPEALS

GERALD DEERING and JUDITH DEERING,

Plaintiff-Appellant ,

v

CLARY, NANTZ, WOOD, HOFFIUS, RANKIN & COOPER, P.C., SCOTT G. SMITH, and THOMAS P. COLLON,

Defendant-Appellees.

UNPUBLISHED
September 9, 1997

No. 189098
Huron Circuit Court
LC No. 93-008621 NH

Before: Young, P.J., and Gribbs and Latreille*, JJ.

PER CURIAM.

Plaintiffs appeal from the circuit court's dismissal of their legal malpractice claims against defendants. Defendants are lawyers who defended plaintiffs in a prior lawsuit. According to plaintiffs, defendants settled that prior action without authorization. When plaintiffs failed to have the settlement order set aside, they sued defendants for malpractice. Defendants moved for summary disposition of Mrs. Deering's claims pursuant to MCR2.16(C)(10), asserting that she was not a real party in interest. Defendants moved for summary disposition of Mr. Deering's claims pursuant to MCR 2.116(C)(7) and (C)(10) based upon collateral estoppel. The circuit judge agreed with defendants and granted both motions. We now reverse.

I.

Plaintiffs argue that the circuit judge erroneously concluded hat Mrs. Deering was not a real party in interest. We agree, and reverse the order dismissing her malpractice action.

The trial judge found that, at the time of the asserted legal malpractice, Mrs. Deering had no interest in the real property which was the subject matter of the underlying lawsuit because her interest was extinguished by her May 1991 divorce decree. Review of the divorce decree indicates that Mrs. Deering received a half-share in that real estate, a mobile home park, subject to Mr. Deering's

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

unexercised option to buy the property. Mrs. Deering did have an interest in the mobile home park at the time her malpractice claim vested, and so was a real party in interest. *Weston v Dowty*, 163 Mich App 238, 242-243; 414 NW2d 165 (1987). The trial judge erred by concluding otherwise.

II.

Next, plaintiffs argue that the trial judge erred by finding that collateral estoppel barred Mr. Deering from claiming that he never agreed to settlement in the underlying lawsuit. We agree. "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 the prior proceeding.*" *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996) (emphasis added). For collateral estoppel to bar relitigation of an issue, the parties must have had full opportunity to litigate the issue in the first action. *Kowatch v Kowatch*, 179 Mich App 163, 168; 445 NW2d 808 (1989). In the underlying case, the trial judge deemed the settlement binding upon plaintiffs because it was entered into in open court by their legal counsel, and never decided the issue of whether plaintiffs had actually ever agreed to their lawyers' actions. The court never determined whether Mr. Deering actually agreed to the settlement, so collateral estoppel did not preclude him from litigating the question in the subsequent malpractice action.

Reversed and remanded. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.
/s/ Roman S. Gribbs
/s/ Stanley J. Latreille