STATE OF MICHIGAN

COURT OF APPEALS

SHELIA STEWART, Personal Representative of the Estate of JAMES STEWART, Deceased,

Plaintiff-Appellant,

v

KENT COUNTY, ALAN BECKSTROM, RON TANIS, JOHN FRIIDSMA, JON MCKAY and CHARLES VANSCOY,

Defendants-Appellees,

and

STEVEN BERGER, M.D., and STEVEN BERGER, M.D., P.C.,

Defendants.

UNPUBLISHED
July 31, 1998

No. 200120
Kent Circuit Court
LC No. 95-4306-NO

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's order granting summary disposition in favor of defendants. We affirm in part and reverse in part.

Plaintiff's decedent, James Stewart, committed suicide while incarcerated in the Kent County jail. This is plaintiff's second lawsuit to arise from his death. In her first action (*Stewart I*), plaintiff sued Kent County and three county employees for gross negligence and violation of Stewart's civil rights under 42 USC § 1983 (§ 1983). The trial court in *Stewart I* denied plaintiff's motion to amend her complaint to add defendants as additional parties. After the trial court denied her motion, plaintiff filed the present action against defendants Kent County, Beckstrom, Tanis, Friidsma, McKay, Vanscoy and others (*Stewart II*). The parties in *Stewart I* accepted a mediation award, and judgment was entered against Kent County and one county employee.[1] Shortly after the entry of the judgment in *Stewart I*,

plaintiff and defendants filed cross-motions for summary disposition in *Stewart II*. The trial court granted defendants' motion under MCR 2.116(C)(7) on the ground that the judgment against Kent County in *Stewart I* was res judicata as to defendants in *Stewart II*. This Court granted plaintiff leave to appeal the trial court's ruling.[2]

Plaintiff raises three arguments on appeal. First, plaintiff argues that the doctrines of res judicata, collateral estoppel, non-joinder, and abatement do not apply because defendants asserted the defenses before the conclusion of *Stewart I*. We disagree.

Defendants Kent County, Beckstrom, Tanis, Friidsma, McKay and Vanscoy filed their affirmative defenses of res judicata, collateral estoppel, non-joinder and abatement before the conclusion of *Stewart I.* Plaintiff did not oppose the defenses until after she obtained the judgment in *Stewart I.* Plaintiff cannot complain that she was prejudiced by the premature filing of the affirmative defenses when she did not contest the defenses until after the entry of the judgment in *Stewart I.*[3] Accordingly, we hold that the trial court properly considered defendants' affirmative defenses.

Next, plaintiff argues that the trial court is estopped to deny that the doctrines of res judicata, collateral estoppel, non-joinder, and abatement do not apply because plaintiff filed *Stewart II* in reliance on the trial court's rulings in *Stewart I*. We disagree.

An equitable estoppel arises where (1) a party by representations, admissions, or silence induces another party to believe facts; (2) the other party detrimentally relies and acts on this belief; and (3) the other party will be prejudiced if the first party is allowed to deny the existence of the facts. *Wiersma v Michigan Bell*, 156 Mich App 176, 184-185; 401 NW2d 265 (1986). Plaintiff cites *Oliphant v Frazho*, 381 Mich 630, 638; 167 NW2d 280 (1969), and *Lawrence v American Surety Co*, 264 Mich 516, 518; 250 NW 295 (1933), to support the general proposition that the state and its officers may be estopped where their conduct or acts are within the scope of their authority. However, neither of those cases applied estoppel to a trial judge's ruling.

Plaintiff claims that the trial court induced her to believe that it was making a case management decision in *Stewart I* which, if followed, would not work to her prejudice if she filed a separate complaint against defendants. The record does not support plaintiff's contention. When plaintiff accepted the mediation award and judgment against Kent County in *Stewart I*, she created grounds to bar her claims in *Stewart II*. Accordingly, we hold that the trial court was not estopped from granting defendants' motion for summary disposition in *Stewart II*.

Finally, plaintiff argues that the judgment against Kent County in *Stewart I* does not bar her claims against defendants in *Stewart II*. We disagree with plaintiff as to defendant Kent County, but agree with plaintiff as to defendants Beckstrom, Tanis, Friidsma, McKay and Vanscoy.

On appeal, a trial court's grant or denial of summary disposition will be reviewed de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(7), the court must accept the plaintiff's well-pleaded allegations as true and construe them most favorably to the plaintiff. *Mollett v City of*

Taylor, 197 Mich App 328, 332-333; 494 NW2d 832 (1992). The court must look to the pleadings, affidavits, or other documentary evidence to see if there is a genuine issue of material fact. *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-377; 532 NW2d 541 (1995). Summary disposition is inappropriate unless no factual development could provide a basis for recovery. *Mollett, supra* at 332-333.

The trial court granted summary disposition pursuant to MCR 2.116(C)(7) on the ground that the judgment in *Stewart I* was res judicata and barred plaintiff's action against defendants in *Stewart II*.[4] Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action. *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997). A second action is barred when (1) the first action was decided on the merits; (2) the matter contested in the second action was or could have been resolved in the first; and (3) both actions involve the same parties or their privies. *Id.*

We hold that *Stewart I* is res judicata as to plaintiff's claims against defendant Kent County. The first element of res judicata is satisfied, because the judgment entered after mediation in *Stewart I* was a decision on the merits. See, *Schwartz v City of Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991); *Reddam v Consumer Mortgage Corp*, 182 Mich App 754, 757; 452 NW2d 908 (1990). The second element of res judicata is satisfied because the matter contested in *Stewart II* was resolved in *Stewart I.* In *Stewart II*, plaintiff alleged that defendant Kent County was liable for its employees who dispensed medical care relating to potential inmate suicides at the jail, while in *Stewart I* plaintiff alleged that Kent County had substandard policies relating to suicide prevention and inmate care. In both cases, plaintiff would present facts to prove that defendant Kent County's care of potentially suicidal inmates led to Stewart's death. The third element of res judicata is satisfied because defendant Kent County was a defendant in both *Stewart I* and *Stewart II*. Accordingly, we hold that plaintiff's claims against defendant Kent County are barred by the doctrine of res judicata.

Defendants Beckstrom, Tanis, Friidsma, McKay, and Vanscoy argue that *Stewart I* is res judicata as to them because, as employees of defendant Kent County, they are in privity with the county, and there is no distinction between suing parties in their official or individual capacities for purposes of res judicata. We disagree. Defendants fail to distinguish their official actions from their individual actions. A judgment rendered in a lawsuit in which one of the parties appears in a representative capacity is not operative under the doctrine of res judicata in a subsequent action involving the same party in his individual right. *York v Wayne Co Sheriff*, 157 Mich App 417, 424; 403 NW2d 152 (1987). Res judicata applies to individuals only if the party protected his individual rights in both suits. *Id.* at 424-425. These individual defendants did not protect their individual rights in *Stewart I* because they were not parties to that lawsuit. Furthermore, the claims against them as individuals in *Stewart II* are distinct from the claims against Kent County in *Stewart I*.[5] Defendants Beckstrom, Tanis, Friidsma, McKay, and Vanscoy have failed to prove the third element of res judicata because they were neither parties nor in privity with parties in *Stewart I*. Therefore, the doctrine of res judicata does not bar plaintiff's claims against them in their individual capacities.

Accordingly, we hold that plaintiff's claims against defendants Beckstrom, Tanis, Friidsma, McKay and Vanscoy are not barred by the doctrine of res judicata

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. No taxable costs, neither party having prevailed in full. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

[1] In *Stewart I*, plaintiff sued Kent County, Kent County Sheriff James Dougan, Captain John Nester and Tim Wiktorowski. Plaintiff dismissed her claims against Wiktorowski and the trial court summarily dismissed all other claims except the gross negligence claim against Nester and the § 1983 claim against the county. The parties accepted a mediation award against defendant Kent County and Nester on the remaining counts. Plaintiff appealed Dougan's dismissal and the trial court's denial of her motion to amend. This Court affirmed the dismissal of Dougan in *Stewart v Dougan*, unpublished opinion per curiam of the Court of Appeals, issued March 3, 1998 (Docket No. 192787). This Court dismissed plaintiff's appeal of the order denying her motion to amend as moot because she chose to file a separate lawsuit against the defendants whom she sought to add.

[2] Defendants Steven Berger, M.D., and Steven Berger, M.D., P.C., are not parties to this appeal.

[3] Furthermore, defendants could raise the affirmative defenses of abatement and non-joinder before a judgment on the merits in *Stewart I*, because those two defenses do not require a prior adjudication. MCR 2.116(C)(6); MCR 2.203.

[4] Because the trial court did not address defendants' other affirmative defenses, those issues were not preserved for appeal. See *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

[5] Plaintiff alleges that defendants Tanis, the jail psychologist, and Friidsma, the jail's medical/social worker, failed to take proper action to treat Stewart's condition. Plaintiff also alleges that defendants McKay and Vanscoy observed Stewart's suicidal condition but failed to take proper action. Finally, plaintiff alleges that defendant Beckstrom failed to develop and implement policies for suicide prevention.