

STATE OF MICHIGAN
COURT OF APPEALS

LILLIAN TOCCO and
CHRISTOPHER TOCCO,

UNPUBLISHED
August 10, 1999

Plaintiffs-Appellants,

v

No. 209177
Wayne Circuit Court
LC No. 96-648068 CZ

MICHAEL ELICH and
GERALDINE ELICH,

Defendants-Appellees.

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette*, JJ.

MEMORANDUM.

Plaintiffs appeal by right from the trial court's order granting defendants' motion for summary disposition in this action alleging undue influence and conversion of assets belonging to a now-deceased family member. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, plaintiffs argue that the trial court improperly granted summary disposition on the basis of res judicata and collateral estoppel.¹ Specifically, plaintiffs assert that because their cause of action for conversion was never considered nor addressed in the prior probate and conservatorship proceedings involving the decedent, and because the assets that are the basis of this litigation were never part of either the conservatorship or probate inventories or estates, the trial court's grant of summary disposition was improper. We disagree.

While plaintiffs' arguments may be relevant to the doctrine of res judicata or "claim preclusion," they are not relevant to the doctrine of collateral estoppel or "issue preclusion," which precludes relitigation of issues previously decided against plaintiffs regardless of whether the same cause of action or property was involved in the prior litigation. See, e.g., *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990). Here, the trial court reasoned that plaintiffs' claims in this case depended upon a

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

relitigation of issues previously decided against them in the probate court action, i.e., issues of undue influence and capacity. Plaintiffs have not offered any arguments responsive to that reasoning.

Affirmed.

/s/ David H. Sawyer

/s/ Donald E. Holbrook, Jr.

/s/ William E. Collette

¹ Although the trial court's ruling does not so specify, it does appear that summary disposition was granted on the grounds of collateral estoppel.