

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH WAYNE DURBAL, JAMES K.
JEDYNAK, and WALTER F. STYLE,

Plaintiffs-Appellants,

v

DONALD JEDYNAK, WALTER BALAKA,
DAVID BALAKA, JEFFREY BALAKA,
ANDREW KOLO, WILLIAM KOLO II,
MICHAEL KOLO, CLETUS SKALMOWSKI,
and KENNETH WILLIAM DURBAL,

Defendants-Appellees.

UNPUBLISHED
February 12, 2002

No. 225890
Wayne Circuit Court
LC No. 98-838705-CK

DONALD JEDYNAK and WALTER BALAKA,

Plaintiffs-Appellees,

v

KENNETH WAYNE DURBAL, JAMES K.
JEDYNAK and WALTER F. STYLE,

Defendants-Appellants.

No. 225891
Wayne Circuit Court
LC No. 98-801733-CK

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

In these consolidated actions, plaintiffs appeal as of right in Docket No. 225890 a circuit court order dismissing their action, and defendants appeal as of right in Docket No. 225891 a circuit court order granting plaintiffs' motion for summary disposition. We affirm in Docket No. 225891, and reverse and remand in Docket No. 225890. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

In Docket No. 225891, the issue before the circuit court was whether the amendment of the Dearborn Woods and Water Club's ("the Club") bylaws in 1997 and 1998 was done in accordance with the procedure established by the Club's 1977 bylaws. The trial court ruled that

it was not and granted plaintiffs' motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court's ruling on a motion for summary disposition is reviewed de novo. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party. *Id.* Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Id.* at 455.

The Club's 1977 bylaws required that three-quarters of the Club's members approve any amendment of the bylaws. By 1997, membership had dwindled to thirteen members; three-quarters of thirteen is 9.75, therefore ten members had to vote on any amendment for it to be effective. The minutes of the 1997 meeting at which the amendment was voted on showed that six members attended and voted on the issue, which passed four to two. Therefore, the 1997 amendment of the bylaws was invalid. The minutes of the 1998 meeting showed that nine members attended and voted on another amendment of the bylaws. Two more voted by proxy and the issue passed nine to two. Eleven members constituted a quorum. The 1977 bylaws required that a quorum of three-quarters be present; nine members were physically present and two were present by proxy.

Because eleven members were present in total, defendants contend that the 1998 amendment of the bylaws complied with the requirements in the 1977 bylaws. However, article V, section I(A) of the 1977 bylaws provided that "All members present and in good standing are to vote in person." Further, section article V, section I(B) prohibited the use of absentee ballots in voting. Because the bylaws required that members vote in person at meetings and ten members were not present at the 1998 meeting, the 1998 amendment of the bylaws was invalid. Therefore, the trial court did not err in granting plaintiffs' motion for summary disposition in Docket No. 225891.

In Docket No. 225890, the issue in the lower court was whether the Club was a partnership subject to dissolution under § 31 of the Uniform Partnership Act, MCL 449.1 *et seq.* In lieu of trial, the parties submitted cross-motions for summary disposition pursuant to MCR 2.116(C)(10). The trial court ruled that the doctrine of collateral estoppel barred plaintiffs' action because their motion to appoint a receiver to handle dissolution of the Club had been denied in lower case number 98-801733-CK (Docket No. 225891).

The applicability of collateral estoppel is a question of law that we review de novo on appeal. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). "Collateral estoppel, or issue preclusion, precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and *necessarily determined* in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001) (emphasis supplied); see also *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995).

In case No. 98-801733-CK (Docket No. 225891) in the lower court, the trial court granted plaintiffs' motion for summary disposition under MCR 2.116(C)(10), holding that the 1997 and 1998 amendments to the Club's bylaws were ineffective. However, the issue of

dissolution of the partnership was not actually and *necessarily* determined as part of the lower court's judgment. "An issue is necessarily determined only if it is 'essential' to the judgment." *People v Gates*, 434 Mich 146, 158; 452 NW2d 627 (1990), citing 1 Restatement Judgments, 2d § 27, p 250, comment h, p 258. Rather, the trial court determined the issue in an interlocutory order in response to defendants' September 10, 1998, motion to appoint a receiver for purposes of dissolution and winding up of the partnership. Because the trial court did not necessarily determine the issue regarding dissolution of the partnership when granting summary disposition, the trial court erred in ruling that plaintiffs' action in Docket No. 225890 was precluded by the doctrine of collateral estoppel.

We affirm in Docket No. 225891 and reverse and remand for further proceedings in Docket No. 225890. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra