

STATE OF MICHIGAN  
COURT OF APPEALS

---

JUANNELIOUS MURRAY AND THEOLA  
MURRAY,

UNPUBLISHED  
December 13, 2005

Plaintiffs-Appellees,

v

ALAN GLUCK, DEBRA GLUCK AND PETER  
DEMOPOLIS,

No. 256690  
Wayne Circuit Court  
LC No. 02-203546-CK

Defendants-Appellants.

---

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right from a judgment in favor of plaintiffs in this retaliatory eviction claim. We affirm.

I

Defendants argue that the circuit court erred by holding a “damages only” trial regarding plaintiffs’ retaliatory eviction claim because that claim is barred by res judicata or collateral estoppel. We disagree. Generally, to preserve an issue for appellate review, the issue must be raised before and decided by the trial court. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Here, when plaintiffs argued that they were entitled to a damages only trial according to res judicata and collateral estoppel, defendants responded by arguing that res judicata and collateral estoppel were inapplicable. Defendants argue, on appeal, that res judicata or collateral estoppel not only apply, but bar plaintiffs’ retaliatory eviction claim as a matter of law.

This Court reviews the applicability of the doctrine of res judicata de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). We review the applicability of the doctrine of collateral estoppel de novo. *Minicuci v Scientific Data Mgmt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000).

The circuit court apparently ordered that plaintiffs were entitled to a damages only trial regarding their retaliatory eviction claim based on either res judicata or collateral estoppel because the district court had already determined that plaintiffs had established the elements of

retaliatory eviction. Plaintiffs then moved the matter to the circuit court because the damages they were claiming exceeded the jurisdiction of the district court.

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to the facts or evidence in a prior action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first case; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374, 379; 521 NW2d 531 (1994).

Collateral estoppel precludes the relitigation of an issue in a subsequent cause of action between the same parties or their privies when the prior action culminated in a valid final judgment and the issue was actually and necessarily litigated in that action. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). In the subsequent action, the ultimate issue to be determined must be identical and not merely similar to that involved in the first action. *Eaton County Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v Michigan Nat'l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). The parties must have had a full and fair opportunity to litigate the issue in the first action. *Kowatch v Kowatch*, 179 Mich App 163, 168; 445 NW2d 808 (1989).

Pursuant to MCL 600.8301, district courts have jurisdiction over all civil actions where the amount in controversy does not exceed \$25,000. A landlord's right to recovery of possession of realty is governed by MCL 600.5701 *et seq.* Thus, an action to recover possession is properly brought in the district court because of its statutory grant of original jurisdiction. MCL 600.5704; *Flynn v Korneffel*, 451 Mich 186, 196 n 22; 547 NW2d 249 (1996). Conversely, circuit courts are courts of general jurisdiction with original jurisdiction over all civil claims and remedies “except where exclusive jurisdiction is given by the constitution or statute to some other court or where circuit courts are denied jurisdiction by the constitution or statutes of this state.” MCL 600.605; see also Const 1963, art 6, § 13; MCL 600.601. Finally, MCR 4.201 provides, in pertinent part:

A summary proceedings action need not be removed from the court in which it is filed because an equitable defense or counterclaim is interposed.

If a money claim or counterclaim exceeding the court's jurisdiction is introduced, the court, on motion of either party or on its own initiative, shall order removal of that portion of the action to the circuit court, if the money claim or counterclaim is sufficiently shown to exceed the court's jurisdictional limit. [MCR 4.201(G)(2)(a) and (b).]

Remarkably, defendants essentially argue that the circuit court erred by permitting a damages only trial regarding plaintiffs’ retaliatory eviction claim because the district court had already ruled that there were no damages. Because a court speaks through its written orders, *In re Gazella*, 264 Mich App 668, 677; 692 NW2d 708 (2005), the district court’s order is dispositive of the issue.

Contrary to defendants' assertion, the district court did not determine the issue of damages in its July 9, 2002, order. Rather, the order states "that the [plaintiffs] have shown the elements of retaliatory eviction pursuant to MCLA 600.5720." The order further cites MCR 4.201(G) and MCL 600.8302. MCL 600.8302(1) and (3) permit the district court to exercise its equitable jurisdiction over proceedings such as those brought in this case under MCL 600.5720, concurrently with a circuit court exercising its jurisdiction. MCR 4.201(G)(2)(a) and (b) allow a portion of an action filed as part of the summary proceedings originating in the district court to be moved to the circuit court where the amounts in controversy in that portion of the case exceed those of the district court's jurisdictional limits.

In this case, the order also provides, "in accordance with MCLA 600.8302, the Court will allow, by motion, a consolidation of the equitable claims to be heard in the Third Circuit Court for the County of Wayne, or remain bifurcated between the Circuit Court and the District Court," which indicates that the district court intended: (1) to move the damages determination of plaintiffs' retaliatory eviction action to the circuit court because the trial court apparently found that portion of the action exceeded the district's court jurisdictional limits and (2) to continue to exercise its equitable jurisdiction over the matter until the parties requested otherwise.

We believe that because the district court had determined that the plaintiffs had already shown the elements of retaliatory eviction, there was no need to relitigate defendants' liability in that respect. The purpose of collateral estoppel is "to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication . . . ." *Monat v State Farm Ins Co*, 469 Mich 679, 692; 677 NW2d 843 (2004) (quotations omitted). The purpose of the doctrine of res judicata is to prevent multiple suits litigating the same cause of action. *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004).

We believe this conclusion is consistent with the purposes underlying the doctrines of collateral estoppel and res judicata. Defendants otherwise fail to demonstrate that plaintiffs did not meet the elements necessary to warrant application of either doctrine. To the contrary, as stated, defendants now argue on appeal that plaintiffs' claim was barred by res judicata because "the 'retaliatory eviction' had been adjudicated to finality in the district court." Based on the language of this order, however, we reject defendants' argument that plaintiffs' claim is barred by res judicata. The language and statutory cites contained in district court's order indicates that it intended the circuit court to decide the amount of damages for plaintiffs' retaliatory evictions claims in light of Michigan's statutory scheme regarding jurisdiction. It does not provide that the district court found plaintiffs had not suffered any damages. There is simply no legal or empirical support for defendants' argument in this respect.

## II

Defendants alternatively argue that the jury's verdict was against the great weight of the evidence. We disagree.

A claim on appeal that the verdict was against the great weight of the evidence must be preceded by a motion for new trial before the trial court. *Heshelman v Lombardi*, 183 Mich App 72, 83; 454 NW2d 603 (1990). Because defendants failed to raise this argument below, it is unpreserved. However, we may review an unpreserved issue for plain error that affected

substantial rights. *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001).

A new trial may be granted on some or all issues if a verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e); *Domako v Rowe*, 184 Mich App 137, 144; 457 NW2d 107 (1990). However, a reviewing court must not substitute its judgment for that of the factfinder, and the jury verdict should not be set aside if there is competent evidence to support it. *Ellsworth v Hotel Corp*, 236 Mich App 185, 194; 600 NW2d 129 (1999). The jury and trial court are accorded substantial deference because both were in a better position to determine credibility and weight the testimony. *Id.*

The second issue, therefore, turns on whether there was competent evidence to support the jury's award of \$235,000 in economic damages for retaliatory eviction action. We believe there was competent evidence to support plaintiffs' damages claim.

Defendants arguments that plaintiffs' damages were either unsupported by the record or purely speculative is without merit. The jury verdict form provided the following awards:

2. State the amount of damages suffered by the plaintiffs, if any, as a result of the retaliatory eviction, of the following kind:
  - a. Out of pocket expenses incurred as of September 30, 2002, other than attorneys fees: \$93,000.
  - b. Attorneys fees incurred as of September 30, 2002: \$7,000.
  - c. Lost profits through September 30, 2002: \$135,000.

During trial, plaintiffs itemized and provided receipts as evidence for all of their "out of pocket" expenses associated with the business, testified at length regarding the problems with the building, and testified that their clientele decreased as the problems persisted. Plaintiffs also provided evidence that they were making a significant amount of money before experiencing the problems with the building. Specifically, there was testimony that plaintiffs received income from operators who would rent stations at the salon, and that this income dissipated as a result of problems with the building and corresponding loss of clientele. Indeed, plaintiffs provided evidence with respect to the exact number of operators that rented booths at their salon, the specific amounts they would have been paid had the building conditions not been substandard, and the time frame for which they believe they lost this income. Plaintiffs also provided the jury with a demonstrative exhibit itemizing all of the damages plaintiffs claimed they incurred as a result of the retaliatory eviction. Finally, plaintiffs provided testimony that they spent approximately \$7,000 in attorney fees as a result of the eviction proceeding.

Defendants did not provide any evidence that directly disputed the evidence presented by plaintiffs. Although defendants chose to attack the veracity of these damages claims on cross-examination, this Court will defer to the jury's determination regarding the credibility and weight of this testimony. *Ellsworth, supra* at 194. Other than a few isolated happenings taken out of context, defendants show no evidence that the jury's determination was the product of passion or prejudice. There was no plain error in this respect, and thus, no error requiring reversal.

Affirmed.

/s/ Helene N. White

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder