

STATE OF MICHIGAN
COURT OF APPEALS

STEPHANIE WILLIAMS, individually, and as
Next Friend of TERRANCE WILLIAMS, JR., a
Minor, and TERRANCE WILLIAMS,
Individually,

UNPUBLISHED
January 31, 2008

Plaintiffs-Appellants,

V

CITY OF GROSSE POINTE PARK, OFFICER
MICHAEL MILLER, and SERGEANT JAMES
HOSHAW,

No. 269211
Wayne Circuit Court
LC No. 03-327778-NH

Defendants-Appellees.

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

PER CURIAM.

Plaintiffs appeal as of right the trial court's grant of summary disposition in defendants' favor based upon collateral estoppel principles. Because collateral estoppel precludes plaintiffs' claims, we affirm.

This case arises out of serious injuries plaintiff, Terrance Williams, Jr. ("Williams"), a minor, sustained on August 17, 2003. On that date, defendants Miller and Hoshaw had received information that Williams was driving a stolen vehicle and that the occupants of the vehicle were tampering with other vehicles in the area. When Williams stopped his vehicle at a stop sign, defendant Hoshaw pulled his squad car in front of Williams and defendant Miller pulled his squad car behind Williams. As Hoshaw exited his police vehicle and began walking toward Williams, Williams backed his vehicle into Miller's police vehicle, then accelerated, driving away from Hoshaw. Hoshaw was knocked down as Williams drove away, prompting Miller to fire several shots at Williams. Williams was struck in the neck with one of the bullets. He was taken to the hospital by ambulance after the incident.

Plaintiffs thereafter filed a five-count complaint against defendants alleging state law claims of gross negligence, assault and battery, and parental loss of services and expenses, as well as federal claims of 42 USC § 1983 violations (excessive force and failure to train). This case was then removed to federal court, but the federal judge declined to exercise pendent jurisdiction over the state claims and remanded those claims back to state court. Plaintiffs' 42 USC § 1983 claims were ultimately dismissed by the federal court. Defendants then moved for

summary disposition on the state law claims, and the circuit court dismissed the claims, citing collateral estoppel.¹

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001). MCR 2.116(C)(7) permits summary disposition where the claim is barred because of any one of several occurrences, including prior judgment (such as by collateral estoppel, see *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998)) or immunity granted by law. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where no material facts are in dispute, whether the claim is barred is a question of law. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). The applicability of collateral estoppel also presents a question of law that is reviewed de novo. *Barrow v Pritchard*, 235 Mich App 478; 597 NW2d 853 (1999).

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). In analyzing whether an issue was "actually litigated" in the prior proceeding, the Court must look at more than what has been pled and argued. "We must also consider whether the party against whom collateral estoppel is asserted has had a full and fair opportunity to litigate the issue." *People v Gates*, 434 Mich 146, 156-157; 452 NW2d 627 (1990). An issue is necessarily determined only if it is "essential" to the judgment. 1 Restatement Judgments, 2d, § 27, p 250, comment h, p 258. Moreover, collateral estoppel applies only when the basis of the prior judgment can be clearly, definitely, and unequivocally ascertained. *Ditmore v Michalik*, 244 Mich App 569, 578; 625 NW2d 462 (2001).

On appeal, plaintiffs claim that collateral estoppel is inapplicable, as the issues in the present matter differ from those litigated in the federal court. We disagree.

This Court addressed nearly this identical argument in *VanVorous v Burmeister*, 262 Mich App 467; 687 NW2d 132 (2004). In that case, the plaintiff's decedent was shot and killed by police officers after a car chase and collision involving the decedent's and an officer's vehicle. Plaintiff then brought suit against the officers, claiming that the officers violated decedent's Fourth Amendment right to be free from excessive force. The district court ultimately granted the defendants' motion for summary judgment regarding the federal

¹ In a November 22, 2006 order, we held this matter in abeyance pending the decision in the Sixth Circuit Court of Appeals. On August 3, 2007, the Sixth Circuit Court of Appeals affirmed the federal court's decision and, on December 21, 2007 denied plaintiff's petition for rehearing en banc.

constitutional claim, finding that the officers' actions were objectively reasonable and that even if the defendants acted unreasonably, qualified immunity still protected the officers from suit. The district court additionally dismissed plaintiff's state law claims of assault and battery, gross negligence, and intentional infliction of emotional distress without prejudice. The plaintiff then pursued her state law claims in circuit court. The defendants moved for summary disposition of the state law claims under MCR 2.116(C)(7), claiming that the federal district court's determination that defendants' use of force was reasonable collaterally estopped relitigation of that issue, so plaintiff could not establish an essential element of her claims. The trial court agreed, granting summary disposition in the defendant's favor.

The precise issue raised before this Court on the plaintiff's subsequent appeal was whether the doctrine of collateral estoppel precluded the plaintiff's state law claims, where her Fourth Amendment excessive force claim had been adjudicated in federal court. This Court noted, "[f]or plaintiff to pursue her claim would require relitigating where on the spectrum of reasonableness defendants' actions fell. Under Michigan law, the officers pursuing VanVorous were entitled to use the amount of force that was objectively reasonable under the circumstances. Similarly, the 'objective reasonableness' standard applied by the federal court also concerned the reasonableness of the conduct from the perspective of an objective police officer under the totality of the circumstances at the time" (internal citations omitted). *Id.* at page 42.

The same holds true here. After reviewing the videotape from Miller's squad car and the parties' briefs, the federal court concluded that Miller's actions in shooting Williams were objectively reasonable. *Williams v City of Grosse Pointe Park*, 2005 WL 2173686, (ED Mich, 2005). The federal court opined that defendants were attempting to stop and question suspected car thieves when Williams backed his vehicle into Miller's squad car, then accelerated around Hoshaw's squad car, throwing him to the ground. *Id.* Based upon Williams' conduct, the federal court found that Miller had probable cause to believe Williams posed a threat of serious physical harm to Hoshaw, himself, and other citizens. *Id.* The federal court thus concluded that defendants' actions were reasonable and that they did not use excessive force when they shot plaintiff. *Id.*

To prevail on the state law claim for assault, plaintiffs must show that there was an intentional unlawful offer of corporal injury to Williams by force, or force unlawfully directed toward him, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact. *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991). To recover civil damages for battery, a wilful and harmful or offensive touching of another person which results from an act intended to cause such a contact must be shown. *Id.* However, it has long been held that when effecting a lawful arrest, an officer has the right to use the amount of force that is reasonably necessary under the circumstances to effect the arrest. *Tope v Howe*, 179 Mich App 91,106; 445 NW2d 452 (1989). "[T]he measure of necessary force is that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary." *Brewer v Perrin*, 132 Mich App 520, 528; 349 NW2d 198 (1984) (quoting *Barrett v United States*, 64 F2d 148, 149 (DC Cir 1933) (internal quotation marks omitted).

This Court finds, as did the *VanVorous* Court, that to find for plaintiffs on an assault and battery claim, "our courts would have to determine that the officers' actions were not justified

because they were not objectively reasonable under the circumstances. Because the federal district court reached and decided the question, further litigation regarding this issue was collaterally estopped.” The issue here was actually and necessarily determined in the prior proceeding. Because the federal court in this case decided that the facts showed both a lawful arrest and a lack of excessive force, plaintiff is collaterally estopped from relitigating these issues and, therefore, cannot establish a claim for assault and battery in this case.

Summary disposition with respect to plaintiffs’ gross negligence claim was appropriate for similar reasons. In their allegations pertaining to gross negligence, plaintiffs contend that defendants owed Williams a duty to “not act grossly negligent and to act prudently and with reasonable care, and otherwise to avoid the use of unnecessary and/or unreasonable force.” Because plaintiffs’ claim of gross negligence is premised upon excessive force, and the federal court already determined that no excessive force occurred, plaintiffs are collaterally estopped from relitigating this issue. Moreover, this Court has rejected attempts to transform claims involving elements of intentional torts into claims of gross negligence. *VanVorous, supra*, at pages 483-484.

Plaintiffs also assert that the federal court’s refusal to accept supplemental jurisdiction over plaintiffs’ state law claims precludes application of collateral estoppel. Again, we disagree. Although the federal court refused to rule on the state law claims, the federal claims involved identical issues to those presented in this case. Plaintiffs cite to a multitude of cases on this and their other arguments which relate to res judicata. However, because collateral estoppel is distinct from res judicata in that it concerns issue preclusion, and not claim preclusion, the federal court's decision may properly be given deference under collateral estoppel.

Affirmed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot