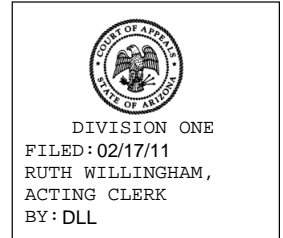


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



FRANCES GILBERT,) 1 CA-CV 10-0292
)
Plaintiff/Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
HARTFORD-COMPREHENSIVE EMPLOYEE)
BENEFIT SERVICE COMPANY, a) Not for Publication -
corporation; HARTFORD LIFE) (Rule 28, Arizona Rules
INSURANCE COMPANY, a) of Civil Appellate Procedure)
corporation; STONE STREET)
CAPITAL, INC., a Pennsylvania)
corporation,)
)
Defendant/Appellee.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2009-000405

The Honorable Joseph B. Heilman, Judge

AFFIRMED

Frances Gilbert) Tempe
Plaintiff/Appellant, *In Propria Persona*

BEAUGUREAU, HANCOCK, STOLL & SCHWARTZ, P.C.) Phoenix
By Amy Schwartz
Attorneys for Defendant/Appellee Stone Street Capital, LLC

KUNZ PLITT HYLAND DEMLONG & KLEIFIELD) Phoenix
By Elliot H. Wernick

B A R K E R, Judge

¶1 Plaintiff Frances Gilbert appeals from the trial court's dismissal of her complaint and award of attorneys' fees in favor of Defendants Hartford-Comprehensive Employee Benefit Service Company, Hartford Life Insurance Company (collectively, "Hartford"), and Stone Street Capital ("Stone Street"). For the reasons set forth below, we affirm.

Facts and Procedural History¹

¶2 In October of 2002, Plaintiff Gilbert sued Elbert White (not a party to this lawsuit) for fraud and other claims. In April of 2004, White sued Ruan Transport Corporation and various other defendants in a separate personal injury lawsuit. As a result of the personal injury lawsuit, White was issued annuities funded by Defendant Hartford. In June of 2006, White and Gilbert settled their fraud suit. One of the settlement terms conditionally provided that Gilbert receive a portion of the Hartford annuities.

¹ In reviewing a trial court's grant of a motion to dismiss, we accept as true the factual allegations of the plaintiff's complaint. *Newman v. Maricopa Cty.*, 167 Ariz. 501, 503, 808 P.2d 1253, 1255 (App. 1991).

¶13 Subsequently, White sold to Defendant Stone Street² settlement payment rights to the same Hartford annuities that he, according to Gilbert, had previously assigned to Gilbert. A superior court order approved this arrangement with Stone Street and directed Hartford to distribute payments to Stone Street. Gilbert intervened in the court action approving the transfer, arguing that she had the sole right to a portion of the annuities and that the court should void the transfer as to this portion. Hartford was not a party to this proceeding.

¶14 The court ordered the parties to mediate Gilbert's claim, and the parties did so. At the mediation, Gilbert and Stone Street agreed that Gilbert would receive a cash settlement in exchange for releasing all potential claims against Stone Street and Hartford. The settlement agreement stated:

Stone Street and Settlement Funding will pay [] to Gilbert as settlement in full of all claims; Gilbert relinquishes all potential claims against Stone Street, Settlement Funding, and the Hartford arising out of the assignment of an interest in annuities belonging to Elbert White

* * *

The parties agree that in the event a dispute regarding this Settlement or the terms of this Settlement, [sic] that they will agree to a binding arbitration as to any term or terms in dispute, with the

² The rights were also sold to Settlement Funding LLC, not named as a defendant in this case.

undersigned mediator acting as arbitrator in the matter.

¶15 Gilbert signed the settlement agreement, but later objected to the term of the agreement releasing Hartford from any potential claim. The court referred this objection to arbitration per the settlement agreement terms. The arbitrator ruled that Gilbert had released Hartford from any potential claim.

¶16 Gilbert objected to the arbitration award stating that she had never intended to release Hartford from liability and that she had never agreed to arbitration. The Pinal County Superior Court ruled that the settlement agreement was enforceable and binding. The court found:

In exchange for a total payment of [] by Applicants to Frances Gilbert . . . Gilbert completely relinquishes any claim or interest of any kind whatsoever, in and to the Structured Settlement Payments due to Elbert White funded by the Hartford annuity policy [], or any portion thereof; and forever releases and discharges Applicants, Hartford, their heirs and successors, officers, directors, employees, agents, attorneys and insurers, as well as any related or successor firms, corporations, associations, partnerships, parents, subsidiaries or affiliates, and each of their officers, directors, employees, agents, attorneys and insurers (hereafter collectively referred to as "Releasees"), from any and all claims, demands, actions, causes of action, damages, detriment, or harm of any kind, costs, expenses, compensation, rights and liabilities of any nature whatsoever, whether known or unknown,

arising out of or relating in any way to the transfer of the Structured Settlement Payments in either of the Transfer Proceedings; in connection with any issue which was raised or could have been raised in the Motions to Set Aside, which in any way arise out of events preceding or subsequent to the Transfer Proceedings involving Applicants, and any other acts of Releasees since the beginning of time, either related or unrelated to the Transfer Proceedings, including, but not limited to, any claims arising out of tort, contract, or any other legal theory, and including, but not limited to, any claims for consequential, punitive, or other damages, whether known or unknown.

Gilbert filed an appeal of this ruling, but the appeal was dismissed. Stone Street then tendered a settlement check. The check included the following endorsement: "In full and complete settlement of all claims in accordance with the Settlement Agreement dated 11/5/07." Gilbert cashed the check.

¶7 In February of 2009, Gilbert filed the current lawsuit against Stone Street and Hartford asserting six claims arising out of Stone Street's purchase and Hartford's funding of the White annuities. On Defendants' motion, the trial court dismissed Gilbert's complaint. It found that the complaint was filed without substantial justification pursuant to Arizona Revised Statutes ("A.R.S.") section 12-349 and awarded attorneys' fees as a sanction. Gilbert timely appealed. We have jurisdiction under A.R.S. § 12-2101(B) (2003).

Discussion

1. Gilbert's Claims Are Barred by Collateral Estoppel

¶18 On appeal, Gilbert claims that she never released Hartford under the settlement agreement because: (1) Hartford was not a party to the lawsuit that resulted in the settlement agreement, (2) Hartford paid no consideration under the settlement agreement, (3) Gilbert never intended to release Hartford under the settlement agreement, and (4) the arbitrator did not hold an evidentiary hearing on the scope of the settlement agreement.

¶19 The doctrine of collateral estoppel, or issue preclusion, bars relitigation of issues that were necessary to a determination in a different proceeding. *Yavapai Cty. v. Wilkinson*, 111 Ariz. 530, 531, 534 P.2d 735, 736 (1975). For collateral estoppel to apply, five elements must be met: (1) the issue must have been actually litigated in the prior proceeding, (2) the parties must have had a full and fair opportunity and motive to litigate the issue, (3) a valid and final decision on the merits must have been entered, (4) resolution of the issues must have been essential to the decision, and (5) the parties must have a common identity. *Campbell v. SZL Props., Ltd.*, 204 Ariz. 221, 223, ¶ 9, 62 P.3d 966, 968 (App. 2003).

¶10 The fifth element is not required if collateral estoppel is being used "defensively" as opposed to

"offensively." *Id.* at ¶ 10. Collateral estoppel is offensive if it is used by a plaintiff to obtain judgment against a defendant. *Id.* It is defensive if it is used by a defendant to prevent a plaintiff from raising a previously litigated unsuccessful claim. *Id.* Because Defendants here are asserting collateral estoppel as a defense to a claim by Plaintiff Gilbert to prevent her from raising a previously litigated issue, collateral estoppel is being used defensively, and identity of the parties is not required. Therefore, the collateral estoppel defense, if the other elements are met, would apply both to claims against Stone Street and claims against Hartford even though Hartford was not a party to the original litigation. We now turn to whether the undisputed facts satisfy those elements.

¶11 The issue of Hartford and Stone Street's release from liability for claims arising out of the White annuities was precisely what was litigated in the Pinal County action. In the arbitration proceedings, Gilbert asserted that she had not released Hartford and Stone Street from liability. The arbitrator ruled against Gilbert, finding that she had released Hartford and Stone Street. Gilbert objected to this in a separate motion before the superior court. The superior court ruled that she had released Hartford and Stone Street. Gilbert filed an appeal, which was later dismissed. Thus, the superior court's ruling became final and binding.

¶12 It is beyond question that all four elements required for collateral estoppel were clearly met: (1) the issue of whether Gilbert released Hartford from liability was actually litigated, (2) a full and fair opportunity and motive to litigate the issue was provided, (3) there was a final decision entered on the merits, and (4) the precise question in issue was at the heart of the dispute making its resolution essential to that litigation. See *Campbell*, 204 Ariz. at 223, ¶ 9, 62 P.3d at 968. There is no basis on which collateral estoppel could not apply on this record. The trial court was correct in dismissing Gilbert's claim.³

2. Attorneys' Fees and Sanctions

¶13 Defendants request their attorneys' fees and costs, and that sanctions be imposed on Gilbert for the filing of a frivolous appeal.

¶14 First, as to attorneys' fees, this matter arises out of contract. Defendants seek fees pursuant to A.R.S. § 12-341.01(A). "In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney fees." See A.R.S. § 12-341.01(A). In our discretion, we award fees in an amount to be determined upon

³ Based on our ruling on collateral estoppel grounds, we need not address the other bases.

compliance with Arizona Rule of Civil Appellate Procedure 21. We also award costs to Defendants as the prevailing party.

¶15 As to sanctions, Rule 25 of the Arizona Rules of Civil Appellate Procedure allows us to "impose upon the offending attorneys or parties such reasonable penalties or damages," "[w]here the appeal is frivolous or taken solely for the purpose of delay." An appeal is frivolous when either (1) it is prosecuted for an improper purpose, or (2) any reasonable attorney would agree that the appeal is without merit. *Price v. Price*, 134 Ariz. 112, 114, 654 P.2d 46, 48 (App. 1982). Appellants appearing *in propria persona* are held to the same standards for familiarity with the law as members of the bar. *Copper State Bank v. Saggio*, 139 Ariz. 438, 441, 679 P.2d 84, 87 (App. 1983).

¶16 Here, any qualified attorney reviewing the Pinal County litigation would realize that it explicitly foreclosed a future suit against Stone Street and Hartford arising from the contested annuities. Much of Gilbert's argument pertaining to the way in which we should construe the settlement agreement is meaningless given that previous litigation had already determined the agreement's scope. *Cf. Johnson v. Brimlow*, 164 Ariz. 218, 222, 791 P.2d 1101, 1105 (App. 1990) (holding that appeal was frivolous where "[m]uch of appellant's argument [was] meaningless, given her concession that the trial court correctly

held that she was not a partner in the business," and "[w]hat remain[ed] [was] a confusing array of assertions variously, and at times simultaneously, foisted upon incorrect propositions of law and completely unsupportable factual conclusions").

¶17 While "we do not impose sanctions lightly," we are aware "that frivolous appeals waste the time and energy of the opposing parties and the resources of this court." *Id.* Because Gilbert's appeal was without merit, sanctions under Rule 25 of the Arizona Rules of Civil Appellate Procedure are warranted.

¶18 We note that Rule 25 directs sanctions in an amount "as the circumstances of the case and the discouragement of like conduct in the future may require." In the trial court proceedings, the trial court limited its sanctions to attorneys' fees, but this did not deter Gilbert from frivolously appealing the ruling. We therefore reserve the right to award sanctions beyond attorneys' fees in an amount to be determined upon review of Defendants' Rule 21 affidavit.

Conclusion

¶19 For the reasons set forth above, the trial court's ruling is affirmed. We award attorneys' fees to Defendants upon compliance with Rule 21 of the Arizona Rules of Civil Appellate Procedure. We will determine at that time whether to award additional sanctions.

/s/

DANIEL A. BARKER, PRESIDING JUDGE

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

MICHAEL J. BROWN, Judge