**Not Designated for Publication**

DIVISION II

CA07-258

November 28, 2007

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| PATSY WHITE<br><br>APPELLANT<br>V.<br><br>TROY DENTON<br><br>APPELLEE | APPEAL FROM THE POLK COUNTY CIRCUIT COURT<br>[NO. CV-2006-003]<br><br>HON. J. W. LOONEY, CIRCUIT JUDGE<br><br>AFFIRMED |

Patsy White appeals from the grant of summary judgment in favor of Troy Denton, finding that White's law suit was "precluded" by collateral estoppel and res judicata. On appeal, White argues that the trial court erred when it granted summary judgment. We affirm.

White is the fee-simple owner of timberland in Polk County, subject to a life estate in the property held by her brother, Kenneth T. Halcumb. In the summer of 2004, Halcumb contracted with Denton to cut and remove timber from the property. On December 3, 2004, White sued her brother for conversion of the timber and for damage to the property. She alleged that the property sustained damage in excess of $100,000 plus more than $25,000 in clean-up and replanting costs. She also prayed for treble damages for the value of the converted timber. Pursuant to her complaint against Halcumb, White obtained a $31,202.80 judgment on December 12, 2005. In that judgment, the trial court denied White's prayer for treble damages, finding that Arkansas Code Annotated section 18-60-102 (Repl. 2003) was

not applicable. It also failed to award damages for clean up or replanting of the timber. White did not appeal. A satisfaction of judgment was entered three days after the entry of the judgment.

On January 10, 2006, White filed a complaint against Denton for trespass and conversion of her timber. She again sought treble damages for the wrongful removal of the timber. Denton timely answered, admitting that he had cut timber on the property upon which Halcumb resided, but generally denying all of White's other allegations. Denton filed a motion for summary judgment on March 13, 2006, asserting that White's complaint was barred by the doctrine of res judicata. He contended that White's claim was resolved by a judgment in her suit against Halcumb. After a hearing, the trial court agreed and dismissed White's complaint.

On appeal, White argues that the trial court erred in granting summary judgment. Citing the Arkansas Contribution Among Tortfeasors Act, codified at Ark.Code Ann. §§ 16-61-201 through 16-61-212 (Repl. 2005), she argues that recovery of a judgment against one joint tortfeasor did not discharge the other joint tortfeasor. She asserts that Denton acted "jointly" with Halcumb to commit the torts of trespass and conversion of her timber, but contends that Denton is "independently liable" for those acts. White argues that her cause of action against Denton is not barred by res judicata because "she has not had a full opportunity to pursue [Denton] as a joint tortfeasor." Citing *Womack v. Maner*, 227 Ark. 786, 301 S.W.2d 438 (1957), she asserts that "no valid contract could be interpreted to have existed between Denton and Halcumb," and therefore Denton was not "in privity" with Halcumb.

She acknowledges that she received as damages the amount of money, that Halcumb sought to collect from the timber, but asserts that the judgment "did not include or address" the remaining alleged damages that she claimed. We find this argument unpersuasive.

When we review the grant of summary judgment where there is not a question of whether factual issues exist, but rather whether it was proper for the trial court to apply the doctrine of res judicata, we simply determine whether appellee was entitled to judgment as a matter of law. *Ruth R. Remmel Revocable Trust v. Regions Fin. Corp.*, 369 Ark. 392, ___ S.W.3d ___ (2007). The term res judicata encompasses both issue and claim-preclusion. *Id.* Under claim preclusion, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action. *Id.* Res judicata bars not only the relitigation of claims that were actually litigated in the first suit but also those that could have been litigated. *Id.* Furthermore, the doctrine of res judicata provides that a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim or cause of action. *See id.* When a case is based on the same events as the subject matter of a previous lawsuit, res judicata will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies. *Id*. The key question regarding the application of res judicata is whether the party against whom the earlier decision is being asserted had a full and fair opportunity to litigate the issue in question. *Id.*

In the first place, we note that the Arkansas Contribution Among Tortfeasors Act is not applicable to the case at bar. As stated in the Commissioners' Prefatory Note to the 1939

uniform act, the purpose of the statute was to establish a "common policy" for "loss distribution among joint tortfeasors." It does not, as White suggests, give a plaintiff the right to sue each of multiple tortfeasors individually for the same damages. *Scogin by Scogin v. Tex-Ark Joist Co.,* 281 Ark. 175, 662 S.W.2d 819 (1984) (holding the Uniform Contribution Among Joint Tortfeasors Act does not preclude application of the doctrine of collateral estoppel). The doctrine of collateral estoppel is based on the policy of limiting litigation to one fair trial on an issue. *Id.* We note that White did recover a judgment for the very claims that she subsequently attempted to assert against Denton. If she was unsatisfied with the amount of the judgment, her remedy was appeal. As our supreme court stated in *Francis v. Francis*, 343 Ark. 104, 31 S.W.3d 841 (2000),

> The test in determining whether res judicata applies is whether the matters presented in a subsequent suit were necessarily within the issues of the former suit and might have been lititigated therein . . . [W]hen the case at bar is based on the same events and subject matter as the previous case, and only raises new legal issues and seeks additional remedies, the trial court is correct to find the present case is barred by res judicata.

Here, White's suit against Denton arose from the same wrongful cutting of her timber and the damages that she seeks are identical. Arguably, she asserts a somewhat different legal theory, negligence, as a basis for imposing liability against Denton, however, under the holding in *Francis*, that fact is of no moment.

Likewise, White's reliance on *Womack*, *supra*, for the proposition that Halcumb and Denton were not in privity, is misplaced. In *Womack*, the supreme court declined to reverse a trial court's decision denying recovery of bribe money that the appellant had paid to avoid

prosecution of his gambling enterprise. In that case, the supreme court stated, "the general rule is, that where an illegal contract has been made, neither the courts of law nor of equity will interpose to grant any relief to the parties, but will leave them where it finds them." In the instant case, White was not a party to the contract, and there was no finding that the contract between Denton and Halcumb was an illegal contract. Accordingly, *Womack* is completely inapposite. Moreover, we note that in *Francis*, *supra*, our supreme court stated, "the true reason for holding an issue to be res judicata is not necessarily the identity or privity of the parties, but instead to put an end to the litigation by preventing a party who has had one fair trial on a matter from relitigating the matter a second time." Accordingly, we hold that the trial court did not err in its application of the doctrine of res judicata to dismiss White's lawsuit.

Affirmed.

GLOVER and MILLER, JJ., agree.