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OPINION OF OCTOBER 9, 2015, WITHDRAWN

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000774-MR

MELVA MOFFETT, AS ADMINISTRATRIX OF THE ESTATE OF EZRA MOFFETT, JR.; MONICA JONES, AS NEXT FRIEND OF EZRA MOFFETT, III; AND MONICA JONES, AS NEXT FRIEND OF ALYSSA MOFFETT — APPELLANTS

APPEAL FROM MCCRACKEN CIRCUIT COURT
v. HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 13-CI-00473

MANNING P. SHAW — APPELLEE

AND NO. 2014-CA-000879-MR

EDGAR G. YANEZ AND VIRGINIA YANEZ — APPELLANTS

APPEAL FROM MCCRACKEN CIRCUIT COURT
v. HONORABLE CRAIG Z. CLYMER, JUDGE
ACTION NO. 13-CI-00473

MANNING SHAW — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CLAYTON, KRAMER, AND VANMETER, JUDGES.

CLAYTON, JUDGE: Melva Moffett, administratrix of Moffett's estate, and Monica Jones, mother and next friend of Moffett's minor children, on behalf of the estate and minor children of Ezra Moffett, Jr., who are plaintiffs in the underlying civil action, appeal the May 1, 2014 summary judgment entered by the McCracken Circuit Court. Further, Edgar Yanez and his mother, Virginia Yanez, defendants in the underlying civil action, cross-appeal the summary judgment. The Court of Appeals granted the Yanezes' motion to consolidate the appeals.

Edgar Yanez and Manning Shaw were in a vehicle that collided with Ezra Moffett, Jr.'s vehicle. Tragically, Moffett died of his injuries. Following the accident, a criminal indictment was filed against Yanez. Subsequently, he entered a guilty plea in the criminal proceeding wherein he unequivocally admitted to being the driver of the vehicle. However, in this action, he now maintains that Shaw was the driver.

Therefore, the appellants maintain that the trial court erred in granting the summary judgment because an issue of material fact still exists as to who was the driver of the Yanezes' vehicle. Shaw, however, counters that the summary judgment was appropriate because Yanez pled guilty and was sentenced to ten years' imprisonment. Consequently, based on Yanez's judicial admission, Shaw argues that under the doctrine of collateral estoppel, there is no issue of material fact. After a careful review of the record, the briefs, and the law, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On June 20, 2012, Edgar Yanez operated a motor vehicle in McCracken County that collided with another vehicle occupied and operated by Ezra Moffett, Jr. The vehicle driven by Yanez was owned by his parents, Bertin and Virginia Yanez (now Soto). Manning Shaw was a passenger in Yanez's vehicle. Both young men were minors at the time of the accident. Moffett who, as mentioned, died from injuries sustained in the accident was driving a vehicle in the scope of his employment with Paxton Media Group, LLC, d/b/a The Paducah Sun (hereinafter "Paxton Media Group").

Melva Moffett was appointed the administratrix of Ezra's estate. Monica Jones is the mother and next friend of Moffett's minor children – Ezra Moffett, III and Alyssa Moffett. Melva Moffett and Jones (hereinafter collectively the "Moffett plaintiffs") filed a wrongful death action naming Yanez; Bertin Yanez; Virginia Soto; Soto and Yanez, Inc.; Vicky's Inc.; Los 3 Amigos Ky., Inc. (hereinafter collectively the "Yanez defendants"); Traveler's Property and Casualty Company of America; and, Shaw as defendants. The Moffett plaintiffs assert negligence, negligent entrustment claims, and ask for punitive damages.

Paxton Media Group filed an intervening complaint seeking judgment against either Yanez or Shaw for workers' compensation benefits paid or payable to the Moffett's Estate. [The Paxton Media Group has not appealed the summary judgment.] Additionally, Yanez and his mother filed a cross-claim against Shaw wherein they alleged that he was the driver of the vehicle that struck Moffett, and thus, Moffett's injuries were attributable to Shaw. Yanez's cross-claim also

maintained that Shaw was responsible for the injuries Yanez suffered in the collision. Finally, Yanez and his mother assert that they are entitled to indemnity, contribution, and/or apportionment. Shaw filed an answer to the cross-claim and proffered a counter-claim against Yanez.

Based on the accident, criminal charges were filed against Yanez on November 16, 2012, in McCracken Circuit Court. Shaw, however, was never criminally charged. Yanez was charged with murder, assault, wanton endangerment, criminal mischief, and the operation of a motor vehicle while under the influence. On September 5, 2013, he moved to enter a guilty plea for manslaughter pursuant to *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed. 162 (1970). However, at the final sentencing hearing, Yanez denied that he was the driver of the vehicle that struck Moffett's vehicle. The judge refused to accept the *Alford* plea without Yanez's affirmation that he was the driver of the vehicle. The matter was set for trial.

A second pretrial conference took place on February 10, 2014, and at that time, Yanez entered a guilty plea to the charges of manslaughter (2nd degree), wanton endangerment (1st degree), and criminal mischief (1st degree). Prior to Yanez's guilty plea, the judge asked him whether he drove the car that crashed into Moffett's car. Yanez answered affirmatively. The judge then directly asked:

> Last time we got into this, the issue was you denied driving the car, so today, you are admitting that you were the driver of the car. Is that correct?

Yanez answered "[y]es sir." Therefore, Yanez unequivocally admitted he was the driver of the vehicle.

Further, as part of the his guilty plea, Yanez admitted that he wantonly caused the death of Moffett when he drove a vehicle and crashed into the vehicle driven by Moffett, that he wantonly caused more than $1,000 in damages to Moffett's vehicle, and that he nearly struck a vehicle driven by David Mast. Yanez was sentenced on all counts for a total sentence of ten (10) years' imprisonment in exchange for the guilty plea. He was also ordered to pay restitution of $7,404.00 to Melva Moffett for Moffett's funeral expenses.

Notwithstanding Yanez's judicial admission during the criminal action that he was the driver of the vehicle, he still asserts that a material fact exists as to who was operating the vehicle. To support his position, Yanez argues that evidence generated in his criminal case by the Kentucky State Police Forensic Laboratory is germane. The investigators took samples from the driver and passenger airbags to ascertain the deoxyribonucleic acid ("DNA") on them. Two samples of the vehicle's driver-side airbag were collected. One sample showed DNA on the vehicle's airbag that was a mixture of Yanez's and Shaw's DNA but matched Shaw at all loci. The other sample matched Shaw at all loci. Likewise, two samples of the vehicle's passenger side airbags were collected. Both samples matched Yanez's at all loci and excluded Shaw.

Nonetheless, as mentioned, Shaw was never criminally charged in connection with the collision. Further, other than the Yanezes' cross-claim, which

seeks damages attributable to Shaw's negligent driving, the Moffett plaintiffs' complaint and the Paxton Media Group's intervening complaint only assign fault to Shaw if he, rather than Yanez, was driving the vehicle. The only cause of action alleged by any party against Shaw, if he drove the vehicle, is that he negligently drove it.

Shaw made a motion for summary judgment contending that Yanez's guilty plea is a judicial admission that forecloses the assertion that Shaw was the driver of the vehicle that struck Moffett's vehicle. The trial court, after considering all parties' briefs, granted Shaw's summary judgment on May 1, 2014. The Court determined that Yanez's guilty plea was a judicial admission that he was the driver of the vehicle. Therefore, based on the doctrine of collateral estoppel, the admission removed any material issue of fact about the identity of the driver.

The Moffett plaintiffs and the Yanez defendants now appeal the decision. Under Kentucky Rules of Civil Procedure (CR) 54.01, a trial court has discretion to release for appeal a final decision upon one or more claims in multiple claim actions. Here, the trial court designated the summary judgment as "final and appealable," since all claims against Shaw were dismissed. Consequently, we have jurisdiction to consider this issue.

STANDARD OF REVIEW

Summary judgment is an extraordinary remedy to be used only "to terminate litigation when, as a matter of law, it appears that it would be impossible for the respondent to produce evidence at the trial warranting a judgment in his

favor and against the movant." *Steelvest, Inc. v. Scansteel Service Ctr., Inc.*, 807 S.W.2d 476, 483 (Ky. 1991) (*quoting Paintsville Hosp. Co. v. Rose*, 683 S.W.2d 255, 256 (Ky. 1985)). Furthermore, summary judgment is appropriate when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56.03.

An appellate review of summary judgment does not involve fact-finding since only legal questions must be resolved. *Davis v. Scott*, 320 S.W.3d 87, 90 (Ky. 2010)(*citing 3D Enterprises Contracting Corp. v. Louisville and Jefferson County Metropolitan Sewer Dist.*, 174 S.W.3d 440, 445 (Ky. 2005)). Moreover, an appellate court need not defer to the trial court's decision on summary judgment and reviews the issue *de novo* because only legal questions and no factual findings are involved. *See Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001).

ANALYSIS

The Moffett plaintiffs and Yanez defendants argue that the grant of summary judgment was premature and that they should have had an opportunity to conduct further discovery and explore the DNA evidence. Specifically, the Moffett plaintiffs argue that Shaw may have been the driver, and the Yanez defendants maintain that Shaw, rather than Yanez, was the driver of the vehicle.

Shaw, however, counters that the summary judgment is appropriate because Yanez pled guilty and has been sentenced. A guilty plea is a judicial admission and precludes Yanez from asserting that Shaw was the driver of the

vehicle. Thus, Shaw elaborates, under the doctrine of collateral estoppel, no genuine issue of material fact exists as to the driver of the vehicle's identity.

The first issue is whether Yanez's statement on February 10, 2014, that he was the driver of the vehicle, which struck and killed Moffett, is a judicial admission.

> A judicial admission…is a formal act of a party (committed during the course of a judicial proceeding) that has the effect of removing a fact or issue from the field of dispute; it is conclusive against the party and may be the underlying basis for a summary judgment, directed verdict, or judgment notwithstanding the verdict. Robert G. Lawson, *The Kentucky Evidence Law Handbook* § 8.15[4], at 590 (4th ed. LexisNexis 2003) (emphasis omitted). Testimony of a party may constitute a judicial admission if deliberate and unequivocal and unexplained or uncontradicted. *Bell v. Harmon*, 284 S.W.2d 812, 815 (Ky.1955).

Witten v. Pack, 237 S.W.3d 133, 136 (Ky. 2007). Here, Yanez's guilty plea occurred during a judicial proceeding, was conclusive against him, and was both unequivocal and uncontradicted. Hence, we conclude that it was a judicial admission.

A trial court considers whether a judicial admission is binding by examining "all the conditions and circumstances proven in the case; and unless all such circumstances and conditions give rise to the probability of error in the party's own testimony, he should not be permitted to avert the consequences of his testimony by the introduction of, or reliance on, other evidence in the case." *Sutherland v. Davis*, 286 Ky. 743, 151 S.W.2d 1021, 1024 (1941).

Here, it is indisputable that Yanez admitted to driving the vehicle, and therefore, any question regarding who was driver of the vehicle has been answered. Moreover, when he made this plea, the answer was thoroughly evaluated by the trial court. The judge queried whether he was under the influence of any substances that would impair his judgment or if he suffered from any mental impairment that would affect his decision to enter a guilty plea. He denied any impairment. Further, Yanez admitted that he understood English, had reviewed the plea form with his attorney, and had ample opportunity to discuss the criminal case, including the DNA evidence, defenses to the charges, and the ramifications of entering a guilty plea. Significantly, no other witness contradicted Yanez's testimony that he was the driver. Besides, even with the DNA evidence in the criminal action, Yanez still entered a guilty plea.

Furthermore, Yanez's guilty plea was a final decision on the merits. Kentucky courts do not distinguish between pleas of guilty and jury adjudications of guilty. *Ray v. Stone*, 952 S.W.2d 220 (Ky. App. 1997). He is now serving his sentence, and his guilty plea removes any factual dispute concerning whether he was the driver of the car. As noted in *Sutherland*, a judicial admission is conclusive because the proposition in question is no longer disputed, may be defined as a formal act done in the course of a judicial proceeding, waives or dispenses with the necessity of an opponent producing evidence, and bars the party from disputing it. *Sutherland*, 151 S.W.2d at 1024.

Additionally, contrary to the assertion of the Yanez defendants, the fact that Yanez, in his first attempt to enter a plea, denied that he was the driver does not invalidate the *Sutherland* analysis in any way. *Sutherland* asks whether prior testimony from other witnesses is contradicted. There were no other witnesses. Even though Yanez initially denied that he was the driver, his eventual acknowledgment in a formal judicial proceeding, which included an appropriate judicial colloquy, negates the denial that he was driving.

Continuing our analysis, we note that underlying the discussion regarding judicial admissions is the doctrine of collateral estoppel, which relates to the doctrine of *res judicata*. The principle behind the doctrine of *res judicata* is that "once the rights of the parties have been finally determined, litigation should end." *Slone v. R & S Mining, Inc.*, 74 S.W.3d 259, 261 (Ky. 2002). It is "an affirmative defense which operates to bar repetitious suits involving the same cause of action." *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 464 (Ky. 1998). The doctrine is comprised of two subparts: claim preclusion and issue preclusion. *Id.* at 464–65.

Kentucky's highest court adopted the preclusion doctrine in *Sedley v. City of West Buechel*, 461 S.W.2d 556 (Ky. 1970). When it adopted collateral estoppel, the Court abandoned the mutuality requirement of *res judicata* and adopted non-mutual collateral estoppel, which is "applicable when at least the party to be bound is the same party in the prior action." *Moore v. Commonwealth*, 954 S.W.2d 317, 319 (Ky. 1997). Further, we note that statements made in one

action can be binding on other actions. *See, e.g., McGuire v. Citizens Fidelity Bank & Trust Co.*, 805 S.W.2d 119 (Ky. 1991). And there is no question that a criminal conviction can be used as collateral estoppel in a later civil action. *May v. Oldfield*, 698 F.Supp. 124 (E. D. Ky. 1988).

As stated, "a criminal conviction may be used for purposes of collateral estoppel in later civil proceedings… but it is also clear that to be so utilized the criminal judgment must of necessity finally dispose of the matters in controversy. *Gossage v. Roberts*, 904 S.W.2d 246, 248 (Ky. App. 1995)(*citing Roberts v. Wilcox*, 805 S.W.2d 152 (Ky. App. 1991). Here, Yanez was criminally convicted, and hence, the issue of the driver's identity was answered. In such cases, Geoffrey C. Hazard, Jr., who served as one of the reporters for the Restatement (Second) of Judgments, opined that "[t]he clearest case for such an estoppel is where a defendant pleads guilty to a substantial criminal charge and then seeks in civil litigation concerning the same transaction to assert that he did not commit the criminal act." Hazard, *Revisiting the Second Restatement of Judgments: Issue Preclusion and Related Problems*, 66 Cornell L.Rev. 564, 577-78 (1981); *quoted in Gossage v. Roberts*, 904 S.W.2d 246, 249 (Ky. App. 1995), and *Ray v. Stone,* 952 S.W.2d at 224.

A review of the concepts of collateral estoppel provides that the essential elements are (1) identity of issues; (2) a final decision or judgment on the merits; (3) a necessary issue with the estopped party given a full and fair

opportunity to litigate; and, (4) a prior losing litigant. *Moore*, 954 S.W.2d at 319. In the case at bar, Yanez's guilty plea met these elements.

First, the threshold issue for the resolution for both the civil and criminal cases is the identity of the vehicle's driver. Second, Yanez's sentence was final and forecloses relitigation of the driver's identity. The Yanez defendants suggest that the identity of the driver was not actually litigated. But integral to the guilty plea, which resulted in a final judgment, was Yanez's admission that he drove the vehicle. Accordingly, it was "actually litigated" by Yanez's admission. Here, the guilty plea resulted in a final judgment. Third, Yanez and the Yanez defendants were given a fair opportunity to litigate. Yanez affirmed this opportunity when he answered the court's questions during the plea colloquy. In addition, Yanez was represented by counsel. Finally, under the *Moore* test, he was the prior losing litigant. *Id.*

Expounding a bit further on the issue of "actually litigated," we observe that the Yanez defendants maintain that a guilty plea does not result in a matter being "actually litigated," and therefore, collateral estoppel does not apply. Nonetheless, they provide no specific case or statute to support this proposition. The Yanez defendants argue that Kentucky courts adopted the language of *Restatement (Second) of Judgments*, (1982) in *Yeoman, supra*. A reading of this case, however, does not show that Kentucky courts have formally adopted the *Restatement*. Rather, the Court in *Yeoman* only referenced the *Restatement* when it stated:

> For issue preclusion to operate as a bar to further litigation, certain elements must be found to be present. First, the issue in the second case must be the same as the issue in the first case. *Restatement (Second) of Judgments* § 27 (1982). Second, the issue must have been actually litigated[.] *Id*. Third, even if an issue was actually litigated in a prior action, issue preclusion will not bar subsequent litigation unless the issue was actually decided in that action. *Id*. Fourth, for issue preclusion to operate as a bar, the decision on the issue in the prior action must have been necessary to the court's judgment.

Id. at 465.

Neither was the language in the *Restatement* officially adopted by the Court nor does the *Restatement* indicate that a guilty plea, which results in a judgment, is not "actually litigated." Besides, as noted in the Yanezes' brief, the *Yeoman* case is factually distinguishable from the case at bar and primarily only addresses the first element of collateral estoppel – identity of issues. The Yanez defendants quote a comment to *Restatement (Second) of Judgments* § 85 regarding "actually litigated." The comment does not specifically state whether a guilty plea is "actually litigated" but that this matter is evidentiary and beyond the scope of this *Restatement.*

Next, the Yanez defendants argue that a guilty plea in a criminal case does not estopp one from arguing the opposite in a civil case is supported by *Race v. Chappell*, 304 Ky. 788, 202 S.W.2d 626 (1947). In *Race*, the Court addressed the use of a criminal conviction, following the entry by the defendant of a guilty plea, in a related civil suit. The question seems to be whether a defendant should

have been permitted to explain the circumstances of the guilty plea. The Court held as follows:

> Ordinarily a judgment in a criminal transaction cannot be received in a civil action to establish the truth of the facts on which it was rendered, but where the defendant in the criminal case pleaded guilty, and the record showing such plea is offered in evidence in a civil action against him, growing out of the same offense, the judgment is admitted, not as a judgment establishing a fact, but as a declaration or admission against interest that the fact is so. However, the defendant may testify as to the circumstances under which the plea was made and explain the reasons for such plea. *See Watson v. Kentucky & Indiana Bridge & R. Company*, 137 Ky. 619, 126 S.W. 146, 129 S.W. 341.

Id. at 628.

Since *Race*, however, the doctrine of *res judicata* has evolved and now includes collateral estoppel. To apply collateral estoppel, which prevents relitigation of a criminal conviction in a later civil action, "the criminal judgment must of necessity finally dispose of the matters in controversy." *Gossage v. Roberts*, 904 S.W.2d 246 (Ky. App. 1995). In the case at bar, it did.

In *Race*, the parties pled guilty to speeding, but the plea was not used to establish a fact but as an admission against interest. In the negligence action therein, speeding was a factor. Here, Yanez's plea established that he was the driver of the vehicle that collided with Moffett's vehicle. It was an admission of fact rather than an element of negligence. Therefore, in the case at bar, we conclude that Yanez is collaterally estopped from stating he was not the driver of a

vehicle in the related civil action after he unequivocally pled that he was the driver in the underlying criminal action.

To explain Yanez's guilty plea, both the Moffett plaintiffs and the Yanez defendants maintain that he could have entered a guilty plea for a variety of reasons other than his guilt. For instance, he may have been protecting himself from a more severe penalty resulting from a trial. This argument, however, is not persuasive. His sentence was harsh – he pled guilty to ten (10) years' imprisonment and did not appeal the decision. The reasons for his guilty plea do not undermine the doctrine of collateral estoppel. The Yanez defendants then provided a lengthy discussion of *Koenigstein v. McKee*, No. 2002-CA-002212-MR, a case that was ordered "not for publication by operation of (CR) 76.28(4)" when the Supreme Court granted discretionary review.

Additionally, Virginia Yanez argues that collateral estoppel should not be applied because she was not a party to the criminal action and not in privity with Edgar. As previously mentioned, Kentucky courts have abandoned the "mutuality" element of collateral estoppel. *See Sedley, supra*. And the Moffett plaintiffs' complaint alleges negligent entrustment of the Yanez vehicle to Yanez or Shaw. (See Kentucky Revised Statutes (KRS) 189.590(3)) Accordingly, Virginia Yanez may be liable regardless of who drove the vehicle. She is still jointly and severally liable for damages caused based on her ownership of the vehicle.

Virginia Yanez's liability for punitive damages is subject to this same analysis. She will have an opportunity to defend whether her entrustment of the vehicle to Yanez was intentional, oppressive, or malicious. The only claim she is estopped from making is that Shaw was the driver of the vehicle. And she has no due process right to pursue a claim against a party who could not have committed an unlawful act since her son has already admitted he was the driver.

Further, we are not persuaded by Yanez's argument that his guilt was not fully litigated because of the differences between the discovery process in criminal and civil matters. In fact, the process is much more stringent in the criminal context and has many more procedural protections. For instance, in a criminal case the burden of proof is beyond a reasonable doubt; the results, imprisonment etc., are harsher; and, the constitutional rights in a criminal action include the right to plead "not guilty," to have counsel, to not incriminate oneself, and to have an impartial jury. Further, the Yanez defendants' suggestion that the DNA evidence indicates that Shaw was the driver is rendered meaningless since this evidence was available to Yanez if he had chosen to go to trial. Consequently, if he believed it would exonerate him, he could have used it at a trial.

Finally, regarding Yanez's cross-claim against Shaw, wherein he alleges that Shaw's negligent driving injured him, logic prohibits such a claim. First, Yanez's criminal plea is conclusive as to his civil liability. Second, to permit Yanez to make a completely contradictory claim would allow inconsistent verdicts, which is not permissible under the law. Moreover, if Yanez filed an affidavit in

the civil action stating that he was not the driver of the vehicle, he then commits another felony – perjury. Virginia Yanez could file an affidavit in the action stating that she gave the keys to the vehicle to Shaw. Nonetheless, the results are the same for her under negligent entrustment.

CONCLUSION

Because Yanez unequivocally admitted that he was the driver of the vehicle that killed Moffett, he made a conclusive judicial admission that he was driving the Yanez vehicle. It follows that Shaw was not driving. This judicial admission absolves Shaw of any potential liability under the theory of collateral estoppel. Consequently, summary judgment is proper since there is no genuine issue of material fact to preclude a grant of summary judgment. Accordingly, we affirm the decision of the McCracken Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT
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