

STATE OF MICHIGAN
COURT OF APPEALS

ROSE MARY GREEN and EDNIQUECH
GRUBBS-MASSEY, Co-Personal Representatives
of the Estate of MALICE WAYNE GREEN,
Deceased,

UNPUBLISHED
February 27, 2001

Plaintiffs-Counter-Defendants-
Appellees,

v

ERNEST L. JARRETT,

No. 219960
Wayne Circuit Court
LC No. 97-737341-NM

Defendant-Counter-Plaintiff-
Appellant,

and

BRUNETTA BRANDY, SAUNDERS V.
DORSEY and STEVEN H. MALACH,

Defendants.

Before: Meter, P.J., and Neff and O'Connell, JJ.

MEMORANDUM.

Defendant Ernest L. Jarrett appeals as of right, asserting that the trial court erred in dismissing his countercomplaint as res judicata. We affirm.

Plaintiffs brought this legal malpractice action concerning the handling of the Malice Green wrongful death action. Defendant Jarrett filed a countercomplaint for attorney fees owed for legal services rendered in that action. The trial court granted plaintiffs' motion for summary disposition of the countercomplaint, based on res judicata.

Res judicata bars a litigant from relitigating a claim when the former action was decided on the merits and the two actions are between the same parties or those in privity with the parties. *In re Quintero Estate*, 224 Mich App 682, 689; 569 NW2d 889 (1997). Privity has been defined as mutual or successive relationships to the same right of property, or such identification of interest of one person with another as to represent the same legal right. *Sloan v City of Madison*

Height, 425 Mich 288, 295-296; 389 NW2d 418 (1986). A privy is one, who after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties. *Id.* In determining privity, courts will look to who had an interest in the lawsuit, who controlled the proceedings, and who stood to gain or lose from the lawsuit. *Wildfong v Fireman's Fund Ins Co*, 181 Mich App 110, 116; 448 NW2d 722 (1989).

The trial court did not err in finding res judicata barred defendant's counterclaim. Defendant extensively litigated his claim for attorney fees in that action. *Green v Nevers*, 111 F3d 1295 (CA6, 1997). Defendant's actions in handling his claim for attorney fees placed him in the same position as a party. Extensive hearings and appeals were held on the issue. Defendant had an interest in the federal lawsuit, he had control over the proceedings held in that court concerning the attorney fee award, and he is bound by the outcome.

Affirmed.

/s/ Patrick M. Meter

/s/ Janet T. Neff

/s/ Peter D. O'Connell