STATE OF MICHIGAN

COURT OF APPEALS

RICHARD D. FAST and COLLEEN FAST, Plaintiffs-Appellants,	UNPUBLISHED May 25, 2001
v	No. 221994 Macomb Circuit Court
JACOB FAST, BARBARA FAST and GREG FAST, Defendants-Appellees.	LC No. 99-001426-CK

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a circuit court order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm in part and reverse in part. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties, who are members of the same family, were involved in various real estate transactions. Jacob sued Richard over profits and losses relating to three properties and obtained a default judgment for $64,975,55. In the process of trying to collect on the judgment, he discovered that Richard had transferred two other properties to his wife Colleen. Pursuant to a motion filed by Jacob, the trial court set aside the transfers as fraudulent pursuant to an opinion and order issued April 7, 1999.

Plaintiffs then filed this action, alleging claims for an accounting, breach of fiduciary duty, and conversion, asserting that defendants had deprived them of their share of the profits from two of the properties at issue in the prior action and from other properties. They also alleged claims for fraud, asserting that Jacob had misrepresented the amount of damages to which he was entitled in the prior action, and for abuse of process relating to Jacob's attempt to enforce the judgment against the properties owned by Colleen.

The court ruled that because both suits arose out of real estate investments by members of the same family and the April 7, 1999, opinion and order had been a decision on the merits, the complaint was barred by the doctrine of res judicata. "Because res judicata is a question of law, we review de novo its application as well as the court's action on a motion for summary disposition." *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

Plaintiffs conceded below that any claims relating to those parcels known as the Lennox and Chalmers properties, which were at issue in the prior action, would be barred. Although they deny that they have raised any claims regarding those properties, they are specifically mentioned in the complaint. Therefore, the trial court's ruling is affirmed as to any claims relating to those two properties. *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 328; 454 NW2d 610 (1990).

We also affirm the trial court's ruling as to plaintiffs' fraud claim. Because there is no dispute over the trial court's jurisdiction in the prior case and the judgment rendered was never appealed, it is final and cannot be collaterally attacked in a subsequent action. *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995); *SS Aircraft Co v Piper Aircraft Corp*, 159 Mich App 389, 393; 406 NW2d 304 (1987). We will not reverse where the trial court reached the right result for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

We reverse the trial court's ruling regarding plaintiffs' other claims. For the doctrine of res judicata to apply, "(1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies." *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997). The prior action was decided by a default judgment, not by the April 7, 1999, order. The trial court later vacated that order, thus depriving it of any conclusive effect. As for the second element, "[r]es judicata bars relitigation of claims actually litigated and those claims arising out of the same transaction that could have been litigated. The test for determining whether two claims are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two claims." *Schwartz v Flint*, 187 Mich App 191, 194-195; 466 NW2d 357 (1991). Only the claims relating to the Lennox and Chalmers properties arose out of the same transactions that formed the basis of Jacob's complaint and would have required presentation of the same facts or evidence as would be required herein. Although the claims relating to the other properties originated from the family's real estate investments, they did not arise out of the same transactions at issue in Jacob's suit. Therefore, plaintiffs' claims regarding profits from those properties other than the Lennox and Chalmers properties are not barred.

We note that the doctrine of collateral estoppel would normally preclude plaintiffs from litigating in this case whether Colleen was the owner of the two properties at issue in the abuse of process claim, that issue having been decided against plaintiffs in the April 7, 1999, opinion and order. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). However, because that order has been vacated, Colleen's ownership has not been finally determined and thus there is no basis for applying collateral estoppel.

Affirmed in part and reversed in part.

/s/ Gary R. McDonald
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly