

STATE OF MICHIGAN  
COURT OF APPEALS

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KIANA WEBB,

Plaintiff-Appellant,

v

CITY OF TAYLOR, a Municipal Corporation,  
POLICE OFFICER RONALD CLEWETT and  
POLICE OFFICER VAL LEMONCELLI, Jointly  
and Severally,

Defendant-Appellees.

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UNPUBLISHED  
December 3, 2002

No. 236153  
Wayne Circuit Court  
LC No. 00-030954-NO

Before: Jansen, P.J., and Holbrook, Jr. and Cooper, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition, pursuant to MCR 2.116(C)(7), (8), and (10). We affirm.

On November 3, 1999, a physical altercation took place between plaintiff and defendant officers after an informal hearing on a traffic ticket in district court. As a result of this incident, plaintiff was charged with the assault and battery of a police officer, defendant Clewett, and was ultimately convicted of this crime by a jury. Subsequent to her conviction, plaintiff filed a complaint against defendants in civil court, alleging, among other things, assault and battery arising from her arrest.<sup>1</sup> Defendants moved for summary disposition of plaintiff's assault and battery claim on the basis of res judicata or collateral estoppel.

During the criminal trial, plaintiff testified that she voluntarily appeared in district court to dispute a traffic ticket that she received from defendant Clewett. Plaintiff claimed that after the hearing, defendant Clewett called out her name and proceeded to follow her out of the courtroom. In response, plaintiff stated that she asked defendant Clewett why he was still bothering her when the matter in court was concluded. At that point, plaintiff testified that defendant Clewett came up behind her, grabbed her wrist, twisted it behind her back, and put her

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<sup>1</sup> Plaintiff's complaint also alleged gross negligence and constitutional violations. However, plaintiff's claim on appeal is limited to the trial court's decision regarding her assault and battery claim.

in a choke hold. Plaintiff admitted that her purse struck defendant Clewett during this exchange. However, she insisted that this was due to the forceful way defendant Clewett grabbed her arm and that it was unintentional. Plaintiff claimed that defendant Lemoncelli subsequently took her left arm and she informed defendant officers that she was in pain as they escorted her to the police station. Plaintiff maintained that she was not informed of the warrant for her arrest until she was placed in jail. Plaintiff argued during the criminal trial that she acted in self-defense.

Defendant Clewett testified that he discovered a warrant for plaintiff's arrest before the hearing and consequently asked her to remain seated at the conclusion of her hearing so he could speak with her about this matter. According to defendant Clewett, when plaintiff ignored his request he followed her out of the courtroom and informed her that he had a warrant for her arrest. Defendant Clewett stated that he grabbed plaintiff's wrist when she continued to walk away and that she responded by striking him in the face with her purse. Defendant Clewett stated that he then placed plaintiff's arm behind her back and received assistance from defendant Lemoncelli in further subduing plaintiff and escorting her to the police station.

Defendant Lemoncelli, the court officer present at the informal hearing, witnessed plaintiff's arrest and essentially confirmed defendant Clewett's account of the events. However, defendant Lemoncelli could not recall whether plaintiff complained of pain. He further stated that his involvement with plaintiff ended when they reached the police station.

Plaintiff's complaint alleged that she was assaulted without any provocation by defendant police officers. She claimed that defendant Clewett used excessive force during her arrest. Plaintiff further asserted that defendant Lemoncelli assisted with the assault by grabbing her left arm. Plaintiff surmised that defendant City's policies and procedures endorsed this type of force.

Defendants' moved for summary disposition, claiming that defendant City was protected by governmental immunity on all of plaintiff's claims because management of a police department constitutes a governmental function. Defendants further maintained that the doctrine of *res judicata* precluded plaintiff from re-litigating her assault and battery claim because it was previously addressed during plaintiff's criminal trial. Moreover, defendants noted that plaintiff's only assertion of assault was against defendant Clewett.

Plaintiff responded to defendants' motion for summary disposition and argued that *res judicata* was inapplicable because defendants use of unnecessary force was never fully litigated. According to plaintiff, the criminal trial failed to adequately address the nature and extent of her injuries. Plaintiff claimed that her criminal trial was narrowly focused because the trial judge anticipated a future civil proceeding. Moreover, plaintiff argued that summary disposition was inappropriate because several questions of material fact remained.

During the hearing on defendant's motion for summary disposition, defendants argued that *res judicata* or collateral estoppel barred plaintiff's action. In a supplemental brief, plaintiff maintained that the issue of unnecessary force was not fully litigated because the sole focus of the trial concerned whether plaintiff struck defendant Clewett. In contrast, defendants argued that the jury determined that defendant officers used reasonable force when it convicted plaintiff of assault and battery, despite her self-defense claim. On July 27, 2001, the trial court issued a written opinion finding that plaintiff's assault and battery allegation was barred by collateral estoppel.

On appeal, plaintiff claims that the trial court erred when it concluded that she was barred from relitigating the issue of assault and battery under the doctrine of collateral estoppel. Specifically, plaintiff argues that the issue of excessive force was never actually litigated or necessarily determined during her previous criminal trial. “We review de novo both a trial court’s decision to grant or deny a motion for summary disposition and issues concerning the application of the doctrine of collateral estoppel.” *Barrow v Pritchard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

Defendant moved for summary disposition under MCR 2.116(C)(7), (8) and (10). In its written opinion, the trial court failed to specify which subsection it relied upon to grant summary disposition on plaintiff’s assault and battery claim. However, because the trial court relied upon the doctrine of collateral estoppel, we find that MCR 2.116(C)(7) is applicable. See *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). In a motion for summary disposition, pursuant to MCR 2.116(C)(7), this Court reviews the affidavits, pleadings and other documentary evidence presented by the parties and “accept[s] the plaintiff’s well-pleaded allegations, except those contradicted by documentary evidence, as true.” *Novak v Nationwide Mutual Ins, Co*, 235 Mich App 675, 681; 599 NW2d 546 (1999).

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior action resulted in a valid final judgment and the issue was actually and necessarily determined. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001).<sup>2</sup> For collateral estoppel to apply, the ultimate issues involved must be identical. *Eaton Co Bd of Rd Comm’rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). An issue is “actually litigated” if the party opposing estoppel “had a full and fair opportunity to litigate the issue.” *People v Gates*, 434 Mich 146, 156-157; 452 NW2d 627 (1990). Moreover, an issue must be essential to the judgment in the prior proceeding to be found “necessarily determined.” *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). A general verdict does not inevitably bar the application of collateral estoppel if the issue was implicitly decided. *Gates, supra* at 158-159. Furthermore, estoppel between civil and criminal proceedings, referred to as “crossover estoppel,” is permissible. *Barrow, supra* at 481.

According to *Williams v Payne*, 73 F Supp 2d 785, 791 (ED Mich, 1999), quoting *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991):

Under Michigan law, an assault is “any intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact.” Battery, according to the *Espinoza* court, is “the wilful and harmful or offensive touching of another person which results from an act intended to cause such contact.” [Citations omitted.]

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<sup>2</sup> Plaintiff does not dispute that the previous criminal proceeding resulted in a valid final judgment or that the same parties were involved in both actions. See *Ditmore, supra* at 577.

An arresting police officer may use reasonable force to effectuate a lawful arrest. *Young v Barker*, 158 Mich App 709, 722-723; 405 NW2d 395 (1987). However, if the force used is excessive, a police officer may be held liable for assault and battery despite the validity of the arrest. See *Delude v Raasakka*, 391 Mich 296, 301-302; 215 NW2d 685 (1974); *White v City of Vassar*, 157 Mich App 282, 293; 403 NW2d 124 (1987). It has long been held that a person who is assaulted may use reasonable force to defend against that assault. *Anders v Clover*, 198 Mich 763, 766; 165 NW 640 (1917). Indeed, in Michigan an individual may use reasonable force to resist an unlawful arrest. *People v Eisenberg*, 72 Mich App 106, 111; 249 NW2d 313 (1976).

Plaintiff suggests that she was not allowed to fully litigate whether defendant officers used excessive force because the trial court refused to admit testimony concerning the nature and severity of the injuries she sustained. However, at the criminal trial the jury was presented with the facts surrounding plaintiff's arrest, which form the basis for her instant assault and battery claim. Plaintiff was further permitted to testify that when defendant Clewett twisted her arm it felt like "somebody just took a knife and ripped tendons out of my arm and they were just on fire." The trial court refused to admit further testimony about whether plaintiff sought medical treatment while in police custody because it occurred after the alleged assault and battery.

Based on the evidence presented, we find that plaintiff had an adequate opportunity to litigate the facts concerning the assault and battery during the criminal trial. Because the events surrounding plaintiff's arrest, including defendant officers' actions, were presented during the criminal case, the issue of unnecessary force was actually litigated for purposes of collateral estoppel. See *Gates, supra* at 156-157. To determine whether a police officer used excessive force while making an arrest, it is necessary to examine whether the officer's actions were "objectively reasonable" given the facts and circumstances confronting the officer. *Graham v Connor*, 490 US 386, 395-397; 109 S Ct 1865; 104 L Ed 2d 443 (1989). Indeed, it is axiomatic that the issue of damages is not reached until a breach of duty is established. Any testimony concerning subsequent medical treatment would have been irrelevant.

Further, in finding plaintiff guilty of assault and battery the jury implicitly found that defendant officers did not use unnecessary force during her arrest. To determine whether plaintiff was properly acting in self-defense, the jury needed to address the issue of whether plaintiff was actually assaulted. *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). While defendant officers were permitted to use reasonable force to arrest plaintiff, any unreasonable force would be considered an assault and battery against which plaintiff could defend. *DeLude, supra* at 301-302; *White, supra* at 293. Thus, the issue of unreasonable force by defendant officers was necessarily determined by the jury during the criminal trial.<sup>3</sup>

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<sup>3</sup> We further note plaintiff's deposition testimony that defendant Lemoncelli did not injure her when he grabbed her arm. Because it is uncontested that this was the only contact defendant Lemoncelli had with plaintiff while making a lawful arrest, plaintiff has failed to raise a material question of fact concerning whether his actions amounted to assault and battery. MCR 2.116(C)(10); see also *Young, supra* at 723.

Consequently, we find that the trial court properly concluded that the doctrine of collateral estoppel applied.<sup>4</sup>

Affirmed.

/s/ Kathleen Jansen  
/s/ Donald E. Holbrook, Jr.  
/s/ Jessica R. Cooper

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<sup>4</sup> Because we find the doctrine of collateral estoppel applicable, we decline to review plaintiff's argument that summary disposition was inappropriate because material issues of fact remained.