STATE OF MICHIGAN

COURT OF APPEALS

HI-LO HEIGHTS LAKEFRONT PROPERTY OWNERS ASSOCIATION, INC.,

Plaintiff-Appellant,

v

COLUMBIA TOWNSHIP, JACKSON COUNTY ROAD COMMISSION, DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES, DEPARTMENT OF NATURAL RESOURCES, CHRISTINE M. BELCHER, DAVID BELCHER, KATHERINE BURR, SHELLIE D. CHEETHAM, SCOTT A. CHEETHAM, SANDRA M. COLE, JACQUELYN DALY, NORMA L. FRANTZ, PHILLIP J. FRANTZ, MICHAEL HEATH, ROY M. HOWARD, WALTER D. SHUBERG, JR., WILLIAM REITZ, JR., SHIRLEY L. KISTKA, ROBERT J. KISTKA, NANETTE LONG, JOHN P. LONG, GRETCHEN MARSHALL, VICTOR MARSHALL, DAWN NESTOR, LEHR G. NEVEL, ROBERT NEVEL, Deceased, HELEN NEVEL, JACK L. PLUMMER, MARGARET PLUMMER, DEBORAH REITZ, PATRICIA J. RICHARDSON, RUDOLPH ROCHESTER, BERNICE ROCHESTER, JEAN SHUBERG, HOLLY M. SMITH, DONALD E. SMITH, Deceased, ROBERT SNYDER, JOAN S. SNYDER, Deceased, JERRY L. SPENCER, CHARLOTTE K. SPENCER, PAMELA A. STANSELL, a/k/a PAMELA STANSELL-KENNEDY, SANDRA J. THOMPSON, TIMOTHY THOMPSON, RONALD WHIPPLE, CATHY WHIPPLE, WILLIAM J. WHITE, ALICE J. WHITE, LARRY WHITING, RAYMOND WILLIAMS, and ELIZABETH WILLIAMS,

Defendants-Appellees,

UNPUBLISHED
November 25, 2003

No. 241708
Jackson Circuit Court
LC No. 01-002466 - CH

and

RICHARD BLAIR, WANDA L. BLAIR, ROBERT W. BLUNT, JAY DUBENDORFER, HELEN HAWK, JAMES L. NEITLING, DONALD NESTER, JILL E. ODONAHOE, MICHAEL ODONAHOE, JACKIE LEE PLUMMER, RYAN SCHRADER, and VIVIAN ZWICK,

Defendants.

Before: Sawyer, P.J., and Griffin and Smolenski, JJ.

PER CURIAM.

Plaintiff Hi-Lo Heights Lakefront Property Owners Association, Inc., appeals as of right from the circuit court's order granting summary disposition in favor of all defendants on the basis that plaintiff's claim was barred by application of the doctrine of res judicata. We reverse.

The Hi-Lo Heights subdivision abuts Clark Lake, in Columbia Township, Jackson County. Within the subdivision, an undeveloped strip of land runs parallel to the lake ("the lake front park") and five avenues run perpendicular to the lake ending at the lake front park.[1] The undeveloped area where the avenues terminate at the lake front park are known as "road ends." Plaintiff, as representative for the interests of the four plot owners nearest to Clark Lake in the subdivision ("front lot owners"), sued various governmental agencies and all Hi-Lo Heights subdivision property owners whose property was not adjacent to the lake front park ("back lot owners" seeking declaratory and injunctive relief regarding the validity and scope of the dedication of the road ends and the lake front park. Plaintiff also sought declaratory relief regarding the front lot owners' riparian rights to the lake along the lake front park.

The back lot owners brought a motion for summary disposition asserting that plaintiff's claims were barred by the doctrine of res judicata because the claims had been adjudicated in an earlier proceeding brought by Kevin and Jo Lynn Knitter, front lot owners, against certain back lot owners in this case. The suit arose because of the defendants' destruction of a fence the Knitters had erected over the road end of Florida Avenue. On motions by the parties, the trial court entertained arguments about the scope of the dedication of the lakefront park and Florida Avenue, as well as the alleged riparian rights of the plaintiffs. The trial court ruled:

> IT IS HEREBY ORDERED AND ADJUDGED that all members of the public, including, but not limited to, the owners of real property located in Hi-Lo

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[1] These avenues are Broadway, York, Woodward, Pennsylvania, Florida and Michigan.

> Heights Subdivision, shall be entitled to enjoy unfettered access to the public right-of-way commonly known as Florida Avenue . . . .
>
> IT IS FURTHER ORDERED AND ADJUDGED that all temporary structures, permanent structures, or other objects, either natural or man-made, which impede the complete and entire unencumbered use of the totality of the gravel road commonly known as Florida Avenue . . . shall be removed by the party responsible for its placement no later than December 15, 2000.
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> IT IS FURTHER ORDERED AND ADJUDGED that the owners of real property located in Hi-Lo Heights Subdivision . . . shall be entitled to enjoy unfettered access, by foot traffic only, on the lakefront park which has been "dedicated to lot owners for passage on foot" as shown on the plat map . . . . [*Knitter v Snyder, et al*, unpublished order of the Jackson Circuit Court, entered January 19, 2001 (Docket No. 00-000796-NZ), p 2-3.]

The court issued a final order, from which no appeal was taken, dismissing with prejudice the plaintiff's complaint and the defendant's countercomplaint. Based on this order, the trial court in this case dismissed plaintiff's claims as being barred by res judicata.

We first note that collateral estoppel, rather than the related doctrine of res judicata, is the more appropriate doctrine to use.[2] Regardless, the pertinent requirement that our decision is based on, identity of parties, is present in both doctrines. *Ditmore v Michalik*, 244 Mich App 569, 576-577; 625 NW2d 462 (2001). Collateral estoppel "precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Dearborn Hts School Dist No. 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). The applicability of this doctrine is a question of law which we review de novo on appeal. *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000). We also review de novo the trial court's summary disposition ruling. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

On appeal, plaintiff argues that its claims are not barred because the issues and parties in *Knitter, supra*, are different than those in the current one. Regarding identity of the issues, we find that plaintiff is partially correct. Plaintiff's claims regarding the dedication and scope of the road ends of Broadway, York, Woodward, Pennsylvania and Michigan Avenues were not at issue in *Knitter*, nor should they have been given the limited scope of the dispute in *Knitter*, and

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[2] Res judicata deals with claim or transactional preclusion, while collateral estoppel involves issue preclusion. *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 60 Mich App 606, 610-611; 231 NW2d 479 (1975), aff'd 399 Mich 449 (1976). The *Knitter* case arose because the defendant had dismantled a fence installed by the plaintiffs. This case was filed to determine the front lot owners', back lot owners', and the public's rights regarding the subdivision's road ends and lakefront park. Thus, the issues in the *Knitter* case are also involved in this case, not the same cause of action.

thus, cannot be barred by collateral estoppel. With regard to plaintiff's remaining claims, the scope of the road end of Florida Avenue and the validity of the dedication and scope of the lakefront park, these issues were decided in *Knitter*.

However, we find that collateral estoppel does not apply to these issues either because there is not substantial identity of parties. As this Court stated in *Dearborn Hts, supra* at 126-127:

> The purpose of the substantial-identity rule is to ensure that collateral estoppel is applied only where the interests of the litigating party are adequately represented in the first proceeding. Thus, a nonparty to an earlier proceeding will be bound by the result if that party controlled the earlier proceeding or if the party's interests were adequately represented in the original matter. A party is one who was directly interested in the subject matter, and who had a right to defend in, or control, the proceedings, and who had a right to appeal from the judgment. [Internal citations omitted.]

Here, several governmental entities are named defendants, while in *Knitter*, the defendants were all back lot owners. Although the two sets of defendants may take the same position in regards to the instant issues, none of the governmental defendants in this case controlled the proceedings in *Knitter* vis-à-vis those defendants, and we cannot say that the government's interests were adequately protected by the back lot owners in *Knitter*. Therefore, without substantial identity of parties, plaintiff's issues regarding Florida Avenue and the lakefront park are not barred by collateral estoppel.[3]

Furthermore, the plaintiffs in *Knitter* raised specific issues regarding the scope, i.e., permissible uses, of Florida Avenue and the lakefront park. But the court only issued a broad order given certain persons "unfettered access" to the road end and lakefront park. The court did not address the permissible uses of these areas in regards to boat mooring and recreational activities. Also, the court did not delineate the riparian rights of the front lot owners, back lot owners, and the public in relation to the Florida Avenue road end or the lakefront park. In the order, the court gave no justification for its ruling and the record as presented to this Court leaves us to speculate as to its reasoning. "Collateral estoppel applies only when the basis of the prior judgment can be clearly, definitely, and unequivocally ascertained." *Ditmore, supra* at 578.

Accordingly, we find that the trial court erred in determining that the Knitter case barred

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[3] Because the governmental defendants in this case are not in privity with the defendants in *Knitter*, we need not address whether privity exists between the other parties. However, we note that plaintiff and individual defendants in this case are in privity with the plaintiffs and the defendants, respectively, in the *Knitter* case.

plaintiff's cause of action in this case and, consequently, erred in granting defendants' motion for summary disposition on this basis.

Reversed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Michael R. Smolenski