

STATE OF MICHIGAN
COURT OF APPEALS

HANS GRUNDMANN,

Plaintiff-Appellant,

v

KLAUS GRUNDMANN,

Defendant-Appellee.

UNPUBLISHED

April 20, 2006

No. 263045

Tuscola Circuit Court

LC No. 03-022189-CZ

Before: Judge Murphy, P.J., and O'Connell and Murray, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from the circuit court order granting defendant's motion for summary disposition under MCR 2.116(C)(7). We reverse and remand for further proceedings.

Plaintiff and defendant are brothers. As an adult, plaintiff had lived with his aging parents at their farm for several years. Plaintiff had a falling out with his parents and left their home. Defendant then moved in with his parents. After the parties' father died, their mother changed her will to leave everything to defendant and signed a quitclaim deed granting her interest in the farm to defendant. After their mother died, defendant remained in the house. Plaintiff contested the will and alleged that defendant had exercised undue influence on their mother. Plaintiff also contested the inventory of his mother's estate and compiled a four-page list of items that he claimed his mother owned and that he thought should be included in her estate. The dispute was mediated with an award of \$25,000 to plaintiff, which the parties accepted. The court ordered entry of the mediation award, granting plaintiff \$25,000 and disposing of all plaintiff's claims in the action.

Meanwhile, even before plaintiff objected to the inventory of his mother's estate, he presented to defendant a list of 78 items that he claimed as his personalty that he had left at their parents' house and requested possession of them. Defendant reviewed the list and apparently agreed to give plaintiff most of the requested items. Defendant's attorney in the probate matter wrote to plaintiff's attorney, stating that defendant agreed with most of the items and would be packing them up for plaintiff. Defendant specifically objected to only three items.

After the estate had been probated, plaintiff received some of the requested items from defendant, but plaintiff claims that he did not receive all of the items and that some of the items

were damaged. He sued defendant for common law and statutory conversion, alleging that defendant intentionally converted some of his possessions that he left at his parents' house by not returning them or by damaging them. Defendant moved for summary disposition. The circuit court granted summary disposition to defendant, finding that plaintiff's claim was barred because of a prior adjudication and awarded defendant \$500 in attorney fees. The court reasoned that plaintiff's claims could have been made during the probate of the parties' mother's estate, and therefore the claims were barred. The court awarded \$500 in attorney fees to defendant as a sanction.

On appeal, plaintiff argues that res judicata and collateral estoppel do not bar his conversion claims because the probate court did not have jurisdiction over his personalty, which was not part of his decedent mother's estate. Based on the law and the record in this case, we remand this case for further proceedings to determine whether the disputed property is plaintiff's personalty, or was part of the decedent's estate and was adjudicated (or could have been adjudicated) in the probate court.

Probate courts have limited statutory jurisdiction regarding the estate of a decedent. The Michigan Estates and Protected Individual's Code ("EPIC"), MCL 700.1101, *et seq.*, grants the probate court both exclusive and concurrent jurisdiction. Pursuant to MCL 700.1302, the court has exclusive jurisdiction over "[a] matter that relates to the settlement of a deceased individual's estate," including "[t]he internal affairs of the estate," the "administration, settlement, and distribution" of the estate, and a "[d]eclaration of rights that involve an estate, devisee, heir, or fiduciary." MCL 700.1303 provides additional jurisdiction "in regard to an estate of a decedent" to "[d]etermine a property right or interest" and "[a]uthorize partition of property." A decedent's estate is defined in MCL 700.1104(b) as "the property of the decedent."

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to the prior litigation. *Sewell v Clean Cut Management, Inc.*, 463 Mich 569, 575; 621 NW2d 222 (2001); *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002); *Kosiel v Arrow Liquors Corp.*, 446 Mich 374, 379; 521 NW2d 531 (1994).

Collateral estoppel "precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). For collateral estoppel to apply, "a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment . . . the same parties must have had a full opportunity to litigate the issue, and there must be mutuality of estoppel." *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995) (citation omitted). "To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel." *Bd of Co Road Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994).

Based on the record in this case, it is not clear whether the items that plaintiff identified on his list are his personalty or were part of his mother's estate. The mediation order entered by the probate court awarded plaintiff \$25,000. Under EPIC, the award presumably mediated plaintiff's interest in property that was part of his mother's estate, not plaintiff's interest in his own property. If the property was not part of the mother's estate, then the probate court lacked jurisdiction over the property, and its order would have no prior adjudicatory effect on plaintiff's claims of conversion against defendant with regard to plaintiff's personalty that was not part of his mother's estate.

Defendant argues that the ownership of the property that plaintiff claims was converted was actually adjudicated in the probate court. In support, defendant maintains that several of the items on the list that plaintiff requested from defendant also appear on the list of items that plaintiff wanted included in his mother's estate. Although some of the items arguably appear on both lists, a comparison of the two lists reveals some items that appear on only one list. Further, based on the correspondence between the parties' probate counsels, it appears defendant agreed that plaintiff had a right to most of the items that he requested. These discrepancies present factual issues with regard to the ownership of at least some of the items that plaintiff requested. We conclude that these issues must be resolved or clarified before the probate court's order can have any prior adjudicatory effect on plaintiff's conversion claims against defendant.

Plaintiff also claims that the award of sanctions was improper. Based on the holding above, we agree. A claim may be sanctioned as frivolous if: (1) the party's primary purpose in initiating the action or asserting the defense was to harass, embarrass or injure the prevailing party; (2) the party had no reasonable basis to believe that the facts underlying his legal position were true; or (3) the party's legal position was devoid of arguable legal merit. The determination whether a claim was frivolous must be based on the facts of the case. MCR 2.114(f), MCR 2.625(A)(2), MCL 600.2591(3)(a). "Not every error in legal analysis constitutes a frivolous position." *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002). Although a claim might have no legal validity, it might not be devoid of arguable legal merit; in which case the imposition of sanctions would be improper. *Id.* at 662-663.

Given the origin of this case, this Court recognizes that it could well have been initiated out of improper motives. But the circuit court's opinion does not show that it concluded that plaintiff brought it to harass, embarrass, or injure defendant. Moreover, plaintiff's claims appear to possess some arguable factual and legal merit. Thus, at this time, we conclude that the circuit court erred in awarding sanctions.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Peter D. O'Connell
/s/ Christopher M. Murray