

STATE OF MICHIGAN
COURT OF APPEALS

TIMOTHY A. NOTTINGHAM, and JENNIFER
L. NOTTINGHAM, Individually and as Next
Friend of BROOKE ELISE NOTTINGHAM,

UNPUBLISHED
December 8, 2011

Plaintiffs-Appellants,

v

DENNIS PEARSON and CYNDIA PEARSON,

No. 299642
Clinton Circuit Court
LC No. 09-010566-CZ

Defendants-Appellees.

Before: WHITBECK, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). The order also denied plaintiffs' motion for summary disposition likewise filed pursuant to MCR 2.116(C)(10). We reverse and remand for further proceedings.

I. FACTS AND PROCEEDINGS

This case revolves around two separate but related cases. The dates of certain events are helpful to an understanding of the issues presented in this case. In an earlier lawsuit filed on February 11, 2008, plaintiffs had filed suit against defendants Dennis and Cyndia Pearson (who are husband and wife) and the realtors for both parties alleging fraud, malpractice, and negligence resulting from plaintiffs' purchase of defendants' home.¹ On June 2, 2008 plaintiffs sought an injunction to freeze a judgment of \$205,848 received by Dennis Pearson² in an unrelated case against Grand Trunk Western. The trial court denied the motion, finding that the circumstances necessary for the granting of an injunction were not present. Cyndia was later dismissed from the lawsuit, and plaintiffs ultimately received a consent judgment in the amount of \$30,000 against Pearson.

¹ *Nottingham v Pearson*, Clinton Circuit Court, Docket No. 08-10314-CZ.

² We will refer to Dennis Pearson as "Pearson" throughout this opinion.

During a subsequent creditor's examination, Pearson stated that his net amount received in the prior case against Grand Trunk Western was \$75,000, and that he gave one-half of the \$75,000 to Cyndia, and that that money was used for household expenses and improvements. Approximately \$26,000 of the \$37,500 given to Cyndia was transferred on July 8, 2008 (ten days after the injunction was denied in the earlier case) and sometime between February 10 and 16, 2009, when Pearson transferred another \$9,000 to an account in Cyndia's name. In addition, on March 1, 2009, Pearson began automatically directing his monthly pension check of \$3,235 to an account in Cyndia's name. As a result of these transfers and other expenditures made by Pearson, he stated in the creditor's exam that he was essentially insolvent.

Plaintiffs filed the instant case alleging that defendants violated the Uniform Fraudulent Transfer Act (UFTA), MCL 566.31 *et seq.*, when Pearson transferred substantially all of his assets to Cyndia before Dennis paid the judgment that plaintiffs obtained in the underlying case. Both parties moved for summary disposition, in part arguing that no genuine issues of material fact existed. As noted, the trial court granted summary disposition in favor of defendants, finding that the order entered in the underlying case denying plaintiffs' motion for an injunction operated to collaterally estop plaintiffs from arguing in the instant case that the transfer of assets was fraudulent. The trial court also found, in a rather cursory and vague manner, that the record did not indicate that a violation of the UFTA had occurred.

II. ANALYSIS

We review a trial court's decision on a motion for summary disposition *de novo*. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004).³ On appeal, plaintiffs argue that the trial court erred in holding that the doctrine of collateral estoppel precluded their claim that defendants violated the UFTA when Pearson transferred virtually all of his assets to Cyndia.

Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior action culminated in a valid final judgment and the issue was actually and necessarily litigated in that action. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). In the subsequent action, the ultimate issue to be determined must be identical and not merely similar to that involved in the first action. *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v Mich Nat'l Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). The parties must have had a full and fair opportunity to litigate the issue in the first action. *Knoblauch v Kenyon*, 163 Mich App 712, 716; 415 NW2d 286 (1987). Mutuality of estoppel is generally a necessary element of collateral estoppel. *Minicuci v*

³ The trial court's order was based on MCR 2.116(C)(10), but part of its decision was that collateral estoppel precluded plaintiffs' claims. Summary disposition based on collateral estoppel is, however, governed by MCR 2.116(C)(7). *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998).

Scientific Data Mgmt, Inc, 243 Mich App 28, 33; 620 NW2d 657 (2000). The applicability of the doctrine of collateral estoppel is reviewed de novo. *Id.* at 34.

As noted in Section I of this opinion, in granting summary disposition on collateral estoppel grounds the trial court reasoned that the order in the previous case denying the injunction to restrain the transfer of assets provided plaintiffs with “a forum to determine that the transfer of those assets would defeat any contingent judgment that might later be entered in the underlying case, I think that’s collateral estoppel.”⁴ Accordingly, the issue on appeal is whether defendants’ alleged improper transfer of assets was actually litigated in the underlying case.

We agree with plaintiffs’ argument that the instant allegations that defendants’ transactions violated the UFTA could not have been litigated in the underlying case because the transactions did not occur until after the trial court denied plaintiffs’ motion for an injunction. As a result, the trial court erred in holding that collateral estoppel precluded plaintiffs’ allegations that defendants’ transfers violated the UFTA.

In the underlying case, plaintiffs sought to enjoin Pearson from disposing of the judgment award prior to resolution of that case. No transfers had taken place at the time plaintiffs sought the injunction. In the instant case, plaintiffs alleged that actual transfers between defendants violated the UFTA. Hence, the issue was not the same in both cases. *Schultz*, 205 Mich App at 376. For the same reason, the allegation that the transfers violated the UFTA was not and could not have been actually litigated in the underlying action, and thus plaintiffs did not have a full and fair opportunity to litigate the issue. *VanDeventer*, 172 Mich App at 463; *Knoblauch*, 163 Mich App at 716. Collateral estoppel was inapplicable in the instant case.

Finally, for two reasons, we decline to address the trial court’s apparent conclusion that there was no violation of the UFTA. First, the rationale behind the trial court’s reasoning is unclear from the transcript, so our ability to accurately review it is somewhat diminished and warrants a remand. *Henry v Dow Chem Co*, 484 Mich 483, 509; 772 NW2d 301 (2009). And (secondly), even though our review of summary disposition orders is de novo, given our conclusion that we must reverse the trial court’s grant of summary disposition and remand this case, we decline to address plaintiffs’ remaining issues on appeal.

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

/s/ William C. Whitbeck
/s/ Christopher M. Murray
/s/ Pat M. Donofrio

⁴ The trial court’s finding of collateral estoppel pertained only to the post-judgment balance of \$75,000 awarded to Dennis Pearson in the unrelated case.