[Cite as *Karnofel v. Superior Waterproofing, Inc.*, 2017-Ohio-9346.]

IN THE COURT OF APPEALS

ELEVENTH APPELLATE DISTRICT

TRUMBULL COUNTY, OHIO

ANN KARNOFEL,	:	**O P I N I O N**
Plaintiff-Appellant,	:	**CASE NO. 2017-T-0026**
- vs -	:	
SUPERIOR WATERPROOFING, INC.,	:	
Defendant-Appellee.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Case No. 2015 CV 01162.

Recommendation: Affirm.

Ann Karnofel, pro se, 1528 Greenwood Avenue, Girard, OH 44420 (Plaintiff-Appellant).

Ned Gold, Jr., Ford, Gold, Kovoor & Simon, Ltd., 8872 East Market Street, Warren, OH 44484 (For Defendant-Appellee).

COLLEEN MARY O'TOOLE, J.

{¶1} Ann Karnofel appeals from the grant of summary judgment by the Trumbull County Court of Common Pleas to Superior Waterproofing, Inc., in her action for breach of contract and negligent workmanship. Finding no reversible error, we affirm.

{¶2} Ann Karnofel lives at 1528 Greenwood Avenue, Girard, Ohio, with her daughters, Delores Karnofel and Donna Jean Beck, who own the residence. On or

about June 27, 2013, Superior submitted a contract to Delores Karnofel for waterproofing work and other improvements to the house. While submitted to Delores, the contract was approved by Ann, in Delores' presence. Work commenced September 16, 2013. October 1, 2013, Delores cancelled the contract before work was completed. Money was owed on the work actually done.

{¶3} Superior filed an action against Delores in the Girard Municipal Court, that being Case No. 2014 CVF 01065. Delores Karnofel is a vexatious litigator, so she moved the Girard Municipal Court for leave to file an answer, counterclaim, and motion for summary judgment. *Superior Waterproofing, Inc. v. Karnofel*, 11th Dist. Trumbull No. 2015-T-0113, 2016-Ohio-6992, ¶2. That court granted her leave. *Id.* Superior moved for summary judgment. *Id.* at ¶4. The trial court granted Superior's motion prior to the filing of any response. *Id.*

{¶4} Delores appealed. In relevant part, this court concluded that, since she was responding to an action, she did not require leave of court to file an answer even though she is a vexatious litigator. *Superior Waterproofing, Inc.*, 2016-Ohio-6992, ¶15, 20. However, we further concluded she did require leave of the Trumbull County Court of Common Pleas – the court which designated her a vexatious litigator – to proceed in the Girard Municipal Court case, on any claim requesting an order or other relief, such as her counterclaim. This court vacated the judgment of the Girard Municipal Court, and remanded for further proceedings. *Id.* at ¶21.

{¶5} On remand, Delores filed a response to Superior's motion for summary judgment. However, a review of the docket in Case No. 2014 CVF 01065 reveals she never applied for leave to proceed with her counterclaim from the Trumbull County

Court of Common Pleas, and did not ultimately file a counterclaim. By a judgment entry filed January 20, 2017, the Girard Municipal Court once again granted Superior's motion for summary judgment. Delores timely noticed appeal from that judgment, having obtained this court's leave to do so. The matter is presently pending as Case No. 2017-T-0010.

{¶6} In the meantime, on or about June 23, 2015, Ann Karnofel filed her complaint in this case, alleging breach of contract and negligent workmanship by Superior, arising from the same contract as that subject of the Girard Municipal Court case. Superior answered. Extensive motion practice ensued. Superior moved for summary judgment, which Ann opposed. By a thoughtful and incisive judgment entered March 2, 2017, the trial court granted Superior's motion. The trial court concluded that Ann's claims were compulsory counterclaims in the Girard Municipal Court case, and that Ann and Delores were in privity. Consequently, the trial court concluded that the Girard Municipal Court case constituted res judicata, binding in this case.

{¶7} Ann timely noticed this appeal, assigning two errors:

{¶8} "[1.] The trial court erred when it failed to see that appellant's daughter, Delores Karnofel's leave to proceed was not valid, when summary judgment was granted to defendant-appellee.

{¶9} "[2.] The trial court erred when it ruled in defendant-appellee's favor for summary judgment."

{¶10} Being interrelated, we treat the assignments of error together.

{¶11} "Summary judgment is a procedural tool that terminates litigation and thus should be entered with circumspection. *Davis v. Loopco Industries, Inc.*, 66 Ohio St.3d

64, 66 (1993). Summary judgment is proper where (1) there is no genuine issue of material fact remaining to be litigated; (2) the movant is entitled to judgment as a matter of law; and (3) it appears from the evidence that reasonable minds can come to but one conclusion, and, viewing the evidence in the non-moving party's favor, that conclusion favors the movant. *See e.g*. Civ.R. 56(C).

{¶12} "When considering a motion for summary judgment, the trial court may not weigh the evidence or select among reasonable inferences. *Dupler v. Mansfield Journal Co.*, 64 Ohio St.2d 116, 121 (1980). Rather, all doubts and questions must be resolved in the non-moving party's favor. *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359 (1992). Hence, a trial court is required to overrule a motion for summary judgment where conflicting evidence exists and alternative reasonable inferences can be drawn. *Pierson v. Norfork Southern Corp.*, 11th Dist. No. 2002-A-0061, 2003-Ohio-6682, ¶36. In short, the central issue on summary judgment is, 'whether the evidence presents sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.' *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-252 (1986). On appeal, we review a trial court's entry of summary judgment de novo. *Grafton v. Ohio Edison Co.*, 77 Ohio St.3d 102, 105 (1996)." (Parallel citations omitted.) *Meloy v. Circle K Store*, 11th Dist. Portage No. 2012-P-0158, 2013-Ohio-2837, ¶5-6.

{¶13} The trial court concluded that Ann and Delores Karnofel were in privity, thus binding Ann to the results of the Girard Municipal Court case.

{¶14} "At the outset, we must determine whether there is an identity of parties in the two actions. *Res judicata* operates as '"a complete bar to any subsequent action on

the same claim or cause of action *between the parties or those in privity with them.*"' (Emphasis added.) *Johnson's Island, Inc. v. Danbury Twp. Bd. of Trustees* (1982), 69 Ohio St.2d 241, 243, * * *, quoting *Norwood v. McDonald* (1943), 142 Ohio St. 299, * * * paragraph one of the syllabus. * * *.

{¶15} "What constitutes privity in the context of *res judicata* is somewhat amorphous. A contractual or beneficiary relationship is not required:

{¶16} "'In certain situations (* * *) a broader definition of "privity" is warranted. As a general matter, privity "is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the *res judicata.*" *Bruszewski v. United States* (C.A.3, 1950), 181 F.2d 419, 423 (Goodrich, J., concurring).' *Thompson v. Wing* (1994), 70 Ohio St.3d 176, 184, * * *." (Emphasis sic.) (Parallel citations omitted.) *Brown v. Dayton*, 89 Ohio St.3d 245, 247-248 (2000).

{¶17} Consequently, privity may be found between two parties when there is a mutuality of interest, or an identity of desired results. *Id. Accord Godale v. Chester Twp. Bd. of Trustees*, 11th Dist. Geauga No. 2004-G-2571, 2005-Ohio-2521, ¶43; *Kessler v. Tuus Tutus, L.L.C.*, 185 Ohio App.3d 240, 2009-Ohio-6376, ¶30 (11th Dist.).

{¶18} The trial court did not err in finding privity between Ann and Delores Karnofel. They are mother and daughter; they live together in the same house. Delores' counterclaim in the Girard Municipal Court case alleged breach of contract and negligent workmanship by Superior, as did Ann's claims in this case. Thus, there is a mutuality of interest and identity of desired result.

{¶19} Further, the trial court also concluded correctly that Ann's claims in this case were compulsory counterclaims in the Girard Municipal Court case.

{¶20} "1. All existing claims between opposing parties that arise out of the same transaction or occurrence must be litigated in a single lawsuit pursuant to Civ.R. 13(A), no matter which party initiates the action.

{¶21} "2. The 'logical relation' test, which provides that a compulsory counterclaim is one which is logically related to the opposing party's claim where separate trials on each of their respective claims would involve a substantial duplication of effort and time by the parties and the courts, can be used to determine whether claims between opposing parties arise out of the same transaction or occurrence." *Rettig Ent., Inc. v. Koehler*, 68 Ohio St.3d 274 (1994), paragraphs one and two of the syllabus.

{¶22} There is a "logical relation" between Delores' intended counterclaim in the Girard Municipal Court case, and Ann's claims in this case: each involve the same contract, and the same opposing party. The claims had to be brought by way of counterclaim in the Girard Municipal Court case. We may take judicial notice of another court's docket. *Hutz v. Gray*, 11th Dist. Trumbull No. 2008-T-0100, 2009-Ohio-3410, ¶40. As we noted above, the docket in the Girard Municipal Court case shows that Delores never filed a counterclaim in that case following remand. Consequently, all of Ann's claims in this case are barred by res judicata.

{¶23} The assignments of error lack merit.

{¶24} The judgment of the Trumbull County Court of Common Pleas is affirmed.

TIMOTHY P. CANNON, J., concurs,

THOMAS R. WRIGHT, J., concurs in judgment only.