

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

GEORGE M. DURHAM,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
JUNAK AUTO REPAIR, INC. & CITY OF	:	
ALIQUIPPA & ALIQUIPPA POLICE	:	
DEPARTMENT,	:	
	:	
Appellee	:	No. 1214 WDA 2012

Appeal from the Order of October 24, 2011
In the Court of Common Pleas of Beaver County
Civil Division No(s): 11315 of 2010 HN-4374

BEFORE: STEVENS, P.J., MUNDY, and FITZGERALD,* JJ.

MEMORANDUM BY FITZGERALD, J.: Filed: January 11, 2013

Appellant, George M. Durham, appeals *pro se* from the order entered in the Beaver County Court of Common Pleas granting the motions of Appellees, Junak Auto Repair, Inc. & City of Aliquippa & Aliquippa Police Department, for summary judgment in this action for return of property based upon the doctrine of collateral estoppel. We affirm.

The trial court has summarized the underlying facts and procedural posture of this case as follows:

On August 17, 2007, in Aliquippa, Pennsylvania, [Appellant] killed Mary Brown by stabbing her numerous

* Former Justice specially assigned to the Superior Court.

times. [Appellant] was convicted of first degree murder and sentenced to life imprisonment Incident to the homicide investigation, the Aliquippa Police Department seized [Appellant's] vehicle, a 2005 Dodge Neon, which was towed and stored by Junak's Auto Repair, Inc. [hereinafter Junak]. . . .

In this criminal case, [Appellant] filed *pro se* Motions for Return of Property, requesting the return of his vehicle and other items, on June 17, 2008 and on June 23, 2008. These Motions were denied by Order dated September 26, 2008 and [Appellant] appealed. In an unpublished [memorandum], the Superior Court of Pennsylvania remanded the case, finding that this Court erred in denying [Appellant's] Motions for Return of Property without requiring the Commonwealth to file an Answer, or, in the alternative, without holding a hearing.^[1]

Following remand, this Court Ordered the Commonwealth to file an Answer to the Motion for Return of Property and the Commonwealth complied on June 17, 2009. On October 2, 2009, this Court entered an Order granting the Motion in part and denying it in part. Specifically, this Court Ordered:

2. [Appellant's] 2005 Dodge Neon automobile is to be released to [Appellant], unless the Commonwealth is presented with written evidence of a secured lien holder, in which event the vehicle is to be released to the secured lien holder, with notice to [Appellant], of the amount of and identity of the secured lien holder.

[Appellant] filed a Motion for Reconsideration on October 28, 2009; in response, the Court rescinded its October 2, 2009 Order and scheduled a hearing upon the Motion for January 8, 2010. Following said hearing, on January 22, 2010, the Court issued a Memorandum Opinion and Order, which contained the following Findings of Fact:

¹ ***Commonwealth v. Durham***, 1763 WDA 2008 (unpublished memorandum) (Pa. Super. May 26, 2009).

17. It should be noted, in the October 2, 2009 Order [Appellant's] 2005 Dodge Neon automobile was to be released to [Appellant], unless the Commonwealth was presented with written evidence of a secured lien holder.

18. The commonwealth has not given any indication that there was a secured lien holder; therefore, [Appellant] is free to make arrangements to retrieve that automobile at [Appellant's] expense for storage, towing and related expense.

[Appellant] again appealed to the Superior Court.

Trial Ct. Op., 10/24/11, at 1-2 (footnote omitted). On November 23, 2010, the Superior Court affirmed in a published opinion. ***Commonwealth v. Durham***, 9 A.3d 641 (Pa. Super. 2010), *appeal denied*, 19 A.3d 1050 (Pa. Mar 29, 2011)

The procedural history relevant to the case at bar, as stated by the trial court, is as follows:²

[Appellant] filed the complaint against [Junak] captioned as a "Civil Action in Replevin," on June 2, 2010.^[3] [Appellant] joined the city of Aliquippa and the Aliquippa Police Department (hereinafter collectively referred to as "Aliquippa") as defendants on August 13, 2010. Both defendants filed Preliminary Objections. Following briefing and oral argument, Aliquippa's Preliminary Objections were denied by Order dated

² The trial court noted that Appellant, "acting *pro se*, has filed various motions and objections that are not relevant to the Court's resolution of this case and therefore need not be described with any particularity." Trial Ct. Op. at 3 n.3.

³ In the complaint, Appellant seeks return of the Dodge Neon. Compl., 8/11/10, at 6.

January 20, 2011 and Junak's Preliminary Objections were denied by Order dated February 3, 2011.

Aliquippa filed a Motion for Summary Judgment, arguing that [Appellant's] case was barred by the doctrine of collateral estoppel on April 15, 2011. Oral arguments upon the Motion was heard on August 22, 2011. At this argument, Junak orally moved for summary judgment for the same reasons raised by Aliquippa.

Trial Ct. Op. at 3-4. Appellant participated at the hearing by video conference. N.T., 8/22/11, at 2.⁴

On October 24, 2011, the court granted the motions for summary judgment based on the doctrine of collateral estoppel. Trial Ct. Op. at 5. This timely appeal followed. Appellant was not ordered to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. The trial court filed a Pa.R.A.P. 1925(a) opinion.⁵

Appellant raises the following issues for our review:

A. Whether the Lower Court erred and abused its discretion in granting Defendants the City of Aliquippa and the Aliquippa Police Department[s] Motion for Summary Judgment based on the doctrine of Collateral Estoppel?

B. Whether the Lower Court erred and abused its discretion by granting Defendants Junak Auto Repair Inc.,

⁴ At the oral argument, Appellant stated that "the issue of the storage and towing fees are in the Federal District Court for the United States District Court." N.T. at 26.

⁵ Appellant filed a "Petition for Review" of the October 24, 2011 Order in the Commonwealth Court on January 12, 2012. **See** Petition for Review, 1/12/12. On January 23, 2012, the Commonwealth Court sent the petition to this Court. **See** Letter, 1/23/12.

Summary Judgment based on the doctrine of Collateral Estoppel?

C. Whether the Lower Court erred and abused its discretion when it granted Summary Judgment holding that no genuine issue of material fact existed essential to the cause of action?

D. Whether the Lower Court erred and abused its discretion and Prejudiced [Appellant] by refusing to let [Appellant] argue issues of material fact during Oral Argument?

E. Whether the Lower Court erred and abused its discretion in granting [Appellees] Summary Judgment when Discovery was not complete?

Appellant's Brief at 5. Appellant contends that the issues of who was entitled to possession of his automobile and who was responsible for paying the towing and storage fees were not previously litigated. *Id.* at 21.

"Our standard of review of a grant of summary judgment is an abuse of discretion. ***Albright v. Abington Memorial Hosp.***, 548 Pa. 268, 696 A.2d 1159, 1165 (1997). Summary judgment as a matter of law may be had where there are no genuine issues of material fact as to a cause of action. Pa.R.Civ.P. 1035.2." ***Carlson v. Community Ambulance Services, Inc.***, 824 A.2d 1228. "Summary judgment is properly granted on grounds of res judicata and/or collateral estoppel if there is no genuine issue of material fact and the pleadings, depositions, answers to interrogatories, admissions on file and supporting affidavits disclose that the moving party is entitled to judgment as a matter of law." ***Day v. Volkswagenwerk Aktiengesellschaft***, 318 Pa. Super. 225, 464 A.2d 1313, 1316 (1983).

Robbins v. Buck, 827 A.2d 1213, 1214 (Pa. Super. 2003).

Collateral estoppel applies if (1) the issue decided in the prior case is identical to one presented in the later case; (2) there was a final judgment on the

merits; (3) the party against whom the plea is asserted was a party or in privity with a party in the prior case; (4) the party or person privy to the party against whom the doctrine is asserted had a full and fair opportunity to litigate the issue in the prior proceeding and (5) the determination in the prior proceeding was essential to the judgment.

Collateral estoppel is also referred to as issue preclusion. It is a broader concept than *res judicata* and operates to prevent a question of law or issue of fact which has once been litigated and fully determined in a court of competent jurisdiction from being relitigated in a subsequent suit.

Catroppa v. Carlton, 998 A.2d 643, 646 (Pa. Super. 2010) (citation omitted), *appeal denied*, 26 A.3d 1100 (Pa. 2011).

In the prior published opinion concerning these parties, this Court opined:

Appellant argues that he should be allowed to recover his vehicle from Junak's Towing without paying the towing and storage fees that have accumulated since his vehicle was impounded on August 18, 2008. We reject Appellant's claim that he is not responsible for the costs associated with the towing and storage of his vehicle.

Here, the police seized Appellant's vehicle as part of the murder investigation, then had it towed to and stored at Junak's. The trial court recounted how Appellant's "blood stained automobile" was "confiscated by the Commonwealth from the parking lot of the Outkast bar" where it "was in close proximity to the murder weapon and the dumpster which contained [Appellant's] blood stained clothes." Trial Court Opinion, 3/26/10, at 2 (unnumbered). According to the trial court:

[t]he Commonwealth appropriately seized the automobile and, after it was determined that the automobile no longer had evidentiary value, it was released to [Appellant] contingent upon payment of

the fee's [sic] rightly requested by Junak's Auto Service in Aliquippa, Pa, where it had been stored.

Id. . . .

Where a vehicle is impounded for the unauthorized use of carrying passengers or goods, the owner may reclaim the vehicle upon "the payment of costs and fines." 52 Pa. Code § 30.62(a), (b); *see also* 53 Pa.C.S.A. § 5714(g) (allowing recovery of the vehicle "upon satisfaction of all penalties imposed and all outstanding fines assessed against the owner or operator of the confiscated vehicle and payment of the costs of the authority associated with confiscation and impoundment"). Moreover, a criminal defendant is responsible for the costs of prosecution, i.e., costs necessarily incurred to secure a conviction. *Commonwealth v. Bollinger*, 274 Pa. Super. 112, 418 A.2d 320, 327 (1979). Practically speaking, such costs would include the towing charge and storage fees incurred as a result of seizing a vehicle as evidence in a murder investigation. *See* 16 P.S. § 1403 (permitting a District Attorney to be reimbursed for expenses incurred in prosecuting cases).

Based on the above authority and limited to the facts of this case, we conclude that Appellant must pay the towing charge and storage fees in order to recover his vehicle because it was impounded as evidence in the investigation of a murder of which Appellant was convicted. Thus, we discern no abuse in the trial court's ruling that Appellant is responsible for the towing charge and storage fees.

Durham, 9 A.3d at 649-50.

In the instant matter, the trial court opined:

Quite simply, the issue raised in [Appellant's] criminal case was whether he was entitled to the return of his vehicle; this Court and the Superior Court have held that [Appellant] could obtain his vehicle, which was being held as evidence in a criminal homicide, upon the appropriate payment of the towing and storage fees to Junak. It is clear that [Appellant] is personally responsible for these

fees. [Appellant] was provided ample opportunity to litigate this exact question in his criminal case and therefore he is estopped from relitigating the question in this civil action for replevin.

Trial Ct. Op. at 5. We agree. This Court held that “Appellant must pay the towing charge and storage fees in order to recover his vehicle”

Durham, 9 A.3d at 650. This issue has been litigated and fully determined in Appellant’s criminal case; therefore it cannot be relitigated in a subsequent civil suit. ***See Catroppa, supra.***⁶

Order affirmed.

⁶ Given our resolution of this issue, we need not address the other issues raised on appeal.