

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

BETHANY FARMER,	:	
Plaintiff-Appellant,	:	CASE NO. CA2009-04-046
- vs -	:	<u>OPINION</u> 11/9/2009
WILLIAM BENNETT BAILEY,	:	
Defendant/Third-Party Plaintiff- Appellee,	:	
- vs -	:	
PEGGY ANN FARMER,	:	
Third-Party Defendant.	:	

APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07CV69953

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HENDRICKSON, J.

{¶1} Plaintiff-appellant, Bethany Farmer, appeals a decision of the Warren County Court of Common Pleas granting summary judgment to defendant-appellee, William Bennett Bailey, in a civil action seeking damages for alleged sexual abuse. For the reasons outlined below, we affirm the decision of the trial court.

{¶2} Bethany is the biological daughter of appellee William Bailey and third-party defendant Peggy Farmer. William and Peggy were married in 1981, but did not reside together until 1987. Bethany was born on March 12, 1987. The parties' divorce, finalized in June 1989, began a protracted and contentious legal battle. William filed numerous motions for contempt alleging that Peggy denied him visitation with Bethany. Following a lengthy hearing, the referee-examiner issued a decision finding Peggy in contempt. In response to allegations made by Peggy, the referee found beyond a reasonable doubt that William had not sexually abused Bethany. The domestic relations court adopted the report of the referee-examiner.

{¶3} The case was ultimately transferred to juvenile court for a determination of whether the parties were suitable parents. During the juvenile court proceedings, Peggy absconded with Bethany. In August 1996, the juvenile court rendered a decision awarding sole custody of Bethany to William. According to William, prior to the institution of the present action he had not seen Bethany since November 1995.

{¶4} The present action was commenced by Bethany in November 2007, after she had reached the age of majority. In her complaint, Bethany sought compensatory and punitive damages against William for allegedly sexually abusing her from 1988 until 1995 or 1996.

{¶5} In October 2008, William filed a motion to dismiss the complaint on the basis of res judicata. William contended that the issue of whether he had sexually abused Bethany had been decided in a number of prior cases, including: (1) the

contempt proceedings against Peggy conducted in the Hamilton County Court of Common Pleas, Domestic Relations Division; (2) the neglect and dependency proceedings conducted in the Hamilton County Court of Common Pleas, Juvenile Division; and (3) a malpractice action filed by Bethany in the United States District Court for the Southern District of Ohio against a number of mental health and legal professionals.

{¶16} At William's request, the dismissal motion was converted to a motion for summary judgment. In a decision issued on March 25, 2009, the trial court awarded summary judgment to William. Bethany timely appeals, raising one assignment of error.

{¶17} A trial court's decision on summary judgment is reviewed de novo. *Burgess v. Tackas* (1998), 125 Ohio App.3d 294, 296. Summary judgment is proper when (1) there are no genuine issues of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can only come to a conclusion adverse to the nonmoving party, construing the evidence most strongly in that party's favor. Civ.R. 56(C). See, also, *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The moving party bears the initial burden of informing the court of the basis for the motion and demonstrating the absence of a genuine issue of material fact. *Dresher v. Burt*, 75 Ohio St.3d 280, 293, 1996-Ohio-107. If the moving party meets its burden, the nonmoving party has a reciprocal burden to set forth specific facts showing a genuine issue for trial. *Id.* We are mindful of these burdens in addressing Bethany's sole assignment of error.

{¶18} "THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT FOR [SIC] DEFENDANT-APPELLEE, WILLIAM BENNETT BAILEY."

{¶19} Challenging the trial court's decision to award summary judgment, Bethany argues that her complaint is not barred by res judicata or collateral estoppel for two

reasons. First, Bethany maintains that she was not a party to the contempt or dependency proceedings, nor was she in privity with her mother in those proceedings. Second, Bethany contends that the claims in the prior cases were not akin to the claims presented in her complaint in the case at bar.

{¶10} The doctrine of res judicata encompasses the following two preclusionary concepts: estoppel by judgment, also referred to as claim preclusion, and collateral estoppel, also referred to as issue preclusion. *Krahn v. Kinney* (1989), 43 Ohio St.3d 103, 107. Estoppel by judgment bars the relitigation of the same cause of action between the same parties. *Karam v. Allstate Ins. Co.* (1985), 27 Ohio App.3d 137, 140. Collateral estoppel precludes a party from relitigating issues of fact or law that have been actually and necessarily litigated and determined in a different cause of action. *State ex rel Schachter v. Ohio Pub. Emps. Retirement Bd.*, 121 Ohio St.3d 526, 2009-Ohio-1704, ¶28.

{¶11} In order to prevail under the doctrine of collateral estoppel, a party must plead and prove the following: (1) the party against whom estoppel is sought was a party or in privity with a party to the previous case; (2) there was a final judgment on the merits in the previous case after a full and fair opportunity to litigate the issue; (3) the issue must have been admitted or actually tried and decided and must be necessary to the final judgment; and (4) the issue must have been identical to the issue involved in the previous case. *Balboa Ins. Co. v. S.S.D. Distrib. Sys., Inc.* (1996), 109 Ohio App.3d 523, 527-28. Bethany's brief essentially challenges the applicability of the first and fourth elements of this doctrine.

{¶12} First, we address the issue of privity. "Privity" is defined as "[t]he connection or relationship between two parties, each having a legally recognized interest in the same subject matter[.]" Black's Law Dictionary (7th Ed.Rev.1999) 1217. In order

for the doctrine of collateral estoppel to operate, privity or mutuality of parties must exist as to the previous and current lawsuits. *Goodson v. McDonough Power Equip., Inc.* (1983), 2 Ohio St.3d 193, paragraph one of the syllabus.

{¶13} Bethany correctly notes that she was not a party to the contempt proceedings in domestic relations court. Moreover, she emphatically argues that she was not in privity with her mother in the domestic relations case solely by virtue of the parental relationship. Both the Ohio Supreme Court and this court have recognized that the mere existence of a parent-child relationship, standing alone, does not establish privity between a parent and his or her child. *Johnson v. Norman* (1981), 66 Ohio St.2d 186, 190; *Fitzpatrick v. Fitzpatrick* (1998), 126 Ohio App.3d 476, 483. Nonetheless, "a mutuality of interest, including an identity of desired result,' may create privity." *Kirkhart v. Keiper*, 101 Ohio St.3d 377, 2004-Ohio-1496, ¶8, quoting *Brown v. Dayton*, 89 Ohio St.3d 245, 248, 2000-Ohio-148.

{¶14} We find that Bethany's interests in the domestic relations case were directly aligned with those of her mother, therefore signifying a mutuality of interest and creating privity. At issue during the domestic relations case was whether Peggy was in contempt of the divorce decree for denying William visitation with Bethany. In making a recommendation regarding visitation, the referee-examiner stated that her task was "to make a finding as to whether or not Bethany has been abused by her father or while in her father's care." While recognizing that such a high standard was unnecessary, the referee-examiner then found beyond a reasonable doubt that William had not sexually abused Bethany or purposefully exposed her to anyone who had sexually abused her.

{¶15} Bethany concedes that the issue of whether William sexually abused her was decided by the referee-examiner, yet she insists that her claim for damages for the alleged sexual abuse should not be barred. As the referee-examiner's report illustrated,

however, the issue of sexual abuse was inextricably linked to the visitation issue which was the subject of the contempt proceedings. Thus, the issue of sexual abuse rested at the heart of the contempt proceedings.

{¶16} It is beyond cavil that Bethany had an interest in avoiding visitation with her father if he had sexually abused her. This interest was shared with her mother, who was clearly protective of Bethany and would not advocate visitation with someone who had sexually abused her. The issue was examined at length during the 12-day hearing, and was the subject of testimony by three psychologists who testified as expert witnesses. Because the issues of visitation and sexual abuse were so intertwined in the domestic relations case, a mutuality of interest existed. Thus, Bethany was in privity with her mother for purposes of the domestic relations case.¹

{¶17} Next we address the fourth element of the collateral estoppel doctrine, whether the issue in the present case is identical to the issue in the prior proceedings. We observe that Bethany's brief actually frames the discussion in the context of claim preclusion. However, the trial court based its decision on issue preclusion, which is the proper preclusionary doctrine for discussion under the circumstances. Accordingly, we shall analyze whether the current lawsuit is an attempt to relitigate any identical issues that have been litigated in the prior proceedings.

{¶18} As the trial court aptly emphasized, the timeframe for the sexual abuse that is the subject of Bethany's complaint in the present matter logically spans the same time frame as the sexual abuse that was alleged by Bethany's mother in the domestic relations case. This logical inference arises from the fact that William had not seen

1. By extension of this reasoning, Bethany was also in privity with her mother for purposes of the juvenile court case. The domestic relations judge transferred a certified copy of the entire record in the domestic relations case to the juvenile court, including the referee-examiner's report finding William had not sexually abused Bethany. Bethany and her mother shared an interest in assuring that custody was not awarded to someone who had sexually abused the child, thus creating privity.

Bethany since her mother absconded with her sometime in late 1995 or early 1996. Bethany's current complaint seeks damages for sexual abuse allegedly occurring from 1988 until 1995 or 1996. This would have been the same time frame as the abuse alleged by Peggy in the domestic relations case.

{¶19} As stated, the domestic relations court adopted the referee-examiner's report finding beyond a reasonable doubt that William did not sexually abuse Bethany. Thus, the issue of whether William sexually abused Bethany during the time frame in question was identical to one of the issues already decided in the domestic relations case.

{¶20} Although Bethany's brief does not challenge the other two collateral estoppel elements, we also find that these two elements were met. That is, there was a final judgment on the merits in the domestic relations case after a full and fair opportunity to litigate the issue, and the issue of whether William sexually abused Bethany was actually tried and decided in the domestic relations case and was necessary to the final judgment.

{¶21} Having disposed of Bethany's two arguments, and finding that all four elements of collateral estoppel have been met, we hold that the trial court did not err in finding that she was collaterally estopped from pursuing her complaint against William seeking damages for allegations of sexual abuse which had previously been litigated.

{¶22} Bethany's sole assignment of error is overruled.

{¶23} Judgment affirmed.

POWELL, P.J., and YOUNG, J., concur.