

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001228-MR

VIRGINIA BURKHART

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT
HONORABLE EDWIN M. WHITE, JUDGE
ACTION NO. 97-CI-00884

FIDELITY CREDIT CORPORATION

APPELLEE

OPINION

AFFIRMING

** ** * * **

BEFORE: DYCHE, HENRY, AND TACKETT, JUDGES.

DYCHE, JUDGE: On June 12, 1992, in Christian District Court Civil Action No. 92-CI-00348, Fidelity Credit Corporation obtained a default judgment in the amount of \$3222.77, plus interest and attorney fees, against Carl E. Pool, Donna L. Pool, and Jessie Pool. To enforce collection of that judgment, Fidelity Credit obtained an order from that court for the Christian County Sheriff to assist it in retrieving a 1965 Ford

dump truck from the Pools. The truck was repossessed that same day, and an order allowing Fidelity Credit to sell the truck was entered by the district court on October 20, 1992.

On the 29th day of October, 1992, Virginia Burkhart, appellant herein, moved the district court to rescind its order allowing Fidelity Credit to repossess and sell the dump truck, alleging that she had a valid lien on the vehicle. Fidelity Credit responded, arguing that the lien was invalid, as it was not noted on the certificate of title for the truck, and that it had paid the only lien noted on the title. Burkhart's motion was denied, and no appeal was taken from the denial, although Burkhart has alleged that she paid an attorney to file an appeal.

Instead, Burkhart and the Pools initiated this action, asserting that the security agreement under which Fidelity claimed an interest in the dump truck was fraudulent, and that the actions of Fidelity were outrageous, extreme, and an interference with the lawful rights of the Pools and Burkhart in and to the truck.

The matter proceeded in the Christian Circuit Court, with Fidelity arguing that the action was barred by the statute of limitations, or by the doctrine of collateral estoppel. A jury trial was conducted, and the court instructed the jury only on Burkhart's claim that Fidelity fraudulently falsified or

altered a security agreement on other property by adding the dump truck after the Pools signed the agreement. The other claims of fraud, that Fidelity had actual knowledge of Burkhart's claim, and that it committed fraud by maintaining the district court action in all its phases knowing of Burkhart's valid security interest, were dismissed by the court. The jury found for Fidelity, and this appeal followed.

The main argument Burkhart raises on appeal is that the trial court erred in holding that all but one of her fraud claims were barred by the doctrine of collateral estoppel. The trial court found that she should have raised these issues in the district court action, and, having failed to do so, she is unable to maintain them in this action. Burkhart does not deny that she attempted to get relief in the district court action,¹ thereby tacitly admitting that that was a proper forum for her claims against Fidelity.

The essential elements of collateral estoppel to be gathered from Sedley [v. City of West Beuchel], 461 S.W.2d 556, 559 (Ky. 1971)] are as follows:

- (1) identity of issues;
- (2) a final decision or judgment on the merits;
- (3) a necessary issue with the estopped party given a full and fair opportunity to litigate;

¹ She does dance around the issue, however, stating in her brief that the motion in district court was brought "in Appellant's name."

(4) a prior losing litigant.

. . . .

In Gregory v. Commonwealth, Ky., 610 S.W.2d 598, 600 (1980), we cited Sedley and stated that "[c]ollateral estoppel, or issue preclusion, is part of the concept of res judicata and serves to prevent parties from relitigating issues necessarily determined in a prior proceeding."

Moore v. Commonwealth Cabinet for Human Resources, 954 S.W.2d 317, 319 (Ky. 1997). "The doctrine of *res judicata* prohibits the relitigation of matters which actually were, or could have been, litigated to a conclusion in an earlier matter." Goodbey v. University Hospital of the Albert B. Chandler Medical Center, Inc., 975 S.W.2d 104, 105 (Ky. App. 1998).

Examining the present action under the standards set out above, we find that the trial court was correct in barring Burkhardt's claims. The issues pertaining to the existence and validity of liens on the dump truck were squarely before the district court; there was a final judgment on the merits; Burkhardt's claim was necessary, and she was given an opportunity to litigate the issue, although she did not fully avail herself of the opportunity; and she was a prior losing litigant, although no appeal, which would have clarified the grounds for the district court's ruling, was filed.

The second issue concerns alleged juror misconduct. Burkhart alleges improper contact between an agent of Fidelity and a juror prior to the communication. Counsel for Burkhart objected, and asked the trial court to disqualify the juror. The trial court conducted an interview with the juror. Following the interview, the trial court exercised its discretion, and determined that no prejudicial conduct occurred. Gould v. Charlton Co., Inc., 929 S.W.2d 734 (Ky. 1996). We have viewed the tape of the interview of the juror, and the arguments of counsel, and can find no error or abuse of discretion.

The judgment of the Christian Circuit Court is affirmed.

ALL CONCUR.

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