

RENDERED: MARCH 31, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-000836-MR

DOROTHY C. MANGRUM

APPELLANT

v. APPEAL FROM MUHLENBERG CIRCUIT COURT
HONORABLE DAVID H. JERNIGAN, JUDGE
CIVIL ACTION NO. 03-CI-00157

SHIRLEY DAVIDSON

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: This factually convoluted case began in 1997, when Cecil Mangrum, Dorothy Mangrum's ex-husband, entered into an oral agreement with Shirley Davidson to purchase property in Luzerne, Kentucky (the Luzerne property) owned by Davidson. In November 1997, Cecil took possession of the

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Luzerne property and began using it as salvage yard. In 2001, Davidson filed suit against Cecil in Muhlenberg Circuit Court (Civil Action No. 01-CI-00022) seeking to eject Cecil from the Luzerne property and to recover the reasonable rental value for Cecil's use of the property from 1997 to 2001. Both men admitted that no written contract providing for the sale of the Luzerne property existed. The court concluded that the oral agreement was unenforceable by virtue of the Statute of Frauds. Since the agreement was unenforceable, the court held a bench trial to determine if Cecil owed rent to Davidson and, if so, the amount. Both men presented evidence regarding the amount Cecil had previously paid, since any money paid or assets given toward the purchase price would be credited against any rent that Cecil might have owed.

During the bench trial, Cecil and Davidson both introduced evidence that they had entered into another agreement in which Cecil and Dorothy would convey three tracts of land, collectively known as the "Drakesboro property," to Davidson. When Cecil and Dorothy conveyed the Drakesboro property to Davidson, the stated consideration for the property was \$10,000.00 "cash in hand paid." However, Cecil insisted that he and Davidson had actually agreed to exchange the Drakesboro property for a \$40,000.00 credit against the purchase price of the Luzerne property. At the bench trial, Dorothy testified

extensively about the alleged \$40,000.00 credit agreement. In its September 6, 2002, judgment, the circuit court found that Cecil and Davidson had agreed to exchange the Drakesboro property for a credit against the purchase price of the Luzerne property. However, the trial court found that the deed accurately reflected the consideration; thus, it awarded Cecil a \$10,000.00 credit. Cecil appealed, but in April 2004, this Court affirmed the circuit court's ruling. Cecil then moved the Supreme Court for discretionary review, but that court denied his motion on February 9, 2005.

While Cecil's appeal was pending before this Court, Dorothy, who had divorced Cecil in 1999, filed suit against Davidson claiming that he had defrauded her. According to Dorothy, Davidson agreed to credit Cecil \$40,000.00 toward the purchase price of the Luzerne property in exchange for the Drakesboro property. Relying on this agreement, she signed the deed conveying the Drakesboro property to Davidson. She further alleged that during the earlier bench trial Davidson perjured himself when he testified that he and Cecil agreed to exchange the Drakesboro property for a \$10,000.00 credit. She asked the circuit court to rescind the deed and order the Drakesboro property re-conveyed to her. In the alternative, she sought recovery of compensatory damages equal to the fair market value of the Drakesboro property.

In June 2004, Davidson moved for summary judgment arguing that *res judicata* barred Dorothy's claim. According to Davidson, the issue regarding the value of the Drakesboro property had been adjudicated in Civil Action No. 01-CI-00022. In July 2004, Davidson moved to dismiss Dorothy's complaint arguing that it failed to state a claim upon which relief could be granted since she was not the real party in interest.

The circuit court granted summary judgment in Davidson's favor concluding that in the earlier case the issue regarding the oral agreement to exchange the Drakesboro property for a credit against the purchase price of the Luzerne property had been litigated. Furthermore, the issue as to the amount of credit, \$10,000.00 versus \$40,000.00, had been litigated as well. Determining that *res judicata* would apply if Dorothy was in privity with Cecil, the court concluded that Dorothy was in privity with Cecil because she and Cecil were married at the time they executed the deed, because she had actually known that Cecil was litigating the issue of the Drakesboro property agreement, and because she had testified on Cecil's behalf about this agreement. The court also concluded that Dorothy came before the trial court with unclean hands since she knowingly signed a deed that falsely stated the consideration. Finally, the court held that Dorothy's complaint failed to state a claim upon which relief could be granted.

On appeal, Dorothy insists that she was not in privity with Cecil since she was not a party to the litigation between him and Davidson, neither did she conduct nor control that cause of action.² Thus, Dorothy maintains that the circuit court could not apply the doctrine of *res judicata* to bar her claim against Davidson.

When a trial court considers a motion for summary judgment, it must view the evidence in a light most favorable to and resolve all doubts in favor of the party opposing the motion.³ The court should not grant summary judgment if any issue of material fact exists.⁴ This Court, on the other hand, must determine whether the trial court correctly found that a genuine issue of material fact did not exist and that the moving party was entitled to judgment as a matter of law.⁵ Since findings of fact are not in dispute, we review a trial court's decision *de novo*.⁶

In the present case, inasmuch as Dorothy was not a party to the prior litigation between Cecil and Davidson, the doctrine that applies is not *res judicata* but the closely

² See *Waddell v. Stevenson*, 683 S.W.2d 955, 959 (Ky. App. 1984).

³ *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 480 (Ky. 1991).

⁴ *Id.*

⁵ *Scifres v. Kraft*, 916 S.W.2d 779, 781 (Ky. App. 1996).

⁶ *Id.*

related doctrine of collateral estoppel.⁷ Collateral estoppel requires that the party to a prior cause of action be in privity with the plaintiff in the present action for the latter to be bound by the prior judgment.⁸ Privity is based upon an identity of interest.⁹ In other words, the parties allegedly in privity with one another must share the same legal right.¹⁰ This insures that the party in the earlier case represented the subsequent plaintiff in the earlier action.¹¹ Justice and fairness require that once an issue has been litigated it should not be relitigated.¹²

In the present case, Dorothy and Cecil had the same legal right in the Drakesboro property: ownership. Furthermore, in the earlier lawsuit Cecil alleged that he and Davidson had agreed to exchange the property for a \$40,000.00 credit towards the purchase price of the Luzerne property. This issue was actually litigated in Civil Action No. 01-CI-00022. In the present case, Dorothy seeks to relitigate the same issue. Since Dorothy and Cecil had the same legal right and since Cecil litigated the issue that Dorothy now seeks to litigate, privity

⁷ *Waddell v. Stevenson, supra*, note 2, at 959.

⁸ *Id.*

⁹ *Id.*

¹⁰ *BTC Leasing, Inc. v. Martin*, 685 S.W.2d 191, 198 (Ky. App. 1984).

¹¹ *Waddell v. Stevenson, supra*, note 2, at 959.

¹² *Id.*

existed between them. The doctrine of collateral estoppel bars Dorothy's subsequent cause of action. Muhlenberg Circuit Court did not err in granting summary judgment in Davidson's favor.

Dorothy admits that she signed the deed which conveyed the Drakesboro property to Davidson. And she admits that the deed stated that the consideration for the property was \$10,000.00 "cash in hand paid." Yet, despite this, she argues that the circuit court should not have applied the doctrine of unclean hands to her since nothing in the record shows that she actually read the deed prior to signing it.

According to the pertinent part of the Kentucky Revised States (KRS) 382.135:

- (1) In addition to any other requirement imposed by law, a deed to real property shall contain the following:

* * *

- (c) In the case of a transfer other than by gift, or with nominal or no consideration a sworn, notarized certificate signed by the grantor or his agent and the grantee or his agent, or the parent or guardian of a person under eighteen (18) years old, that the consideration reflected in the deed is the full consideration paid for the property[.]

Any violation of KRS 382.135 by willfully and fraudulently misstating the full, actual consideration in a deed constitutes

a Class D felony.¹³ In the present case, Dorothy acknowledges that she signed the deed conveying the Drakesboro property to Davidson knowing that the deed misstated the full and actual consideration. In fact, she testified to this during the trial of Civil Action No. 01-CI-00022. Given this admission, the trial court correctly applied the doctrine of unclean hands.

Finally, Dorothy argues that her complaint does, in fact, state a claim upon which relief can be granted. We find it unnecessary to address this issue.

The judgment is affirmed.

ALL CONCUR.

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¹³ Ky. Rev. Stat. (KRS) 382.990.