RENDERED: JANUARY 5, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2016-CA-001208-MR

CHRISTIAN CAUDILL, INDIVIDUALLY, AND CHRISTIAN CAUDILL AND NANCYE YOST, CO-GUARDIANS OF KRISTEN A. CAUDILL AND LESLIE CHRISTIAN LUKE CAUDILL; AND CHRISTIAN CAUDILL AS ADMINISTRATOR OF THE ESTATE OF BEAU ZACHARIAH CAUDILL — APPELLANTS

v.

APPEAL FROM PIKE CIRCUIT COURT
HONORABLE STEVEN D. COMBS, JUDGE
ACTION NO. 11-CI-01307

WILLIAM R. JOHNSON AND JOHNSON LAW FIRM, P.S.C. — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, DIXON AND STUMBO,[1] JUDGES.

[1] Judge Janet Stumbo concurred in this opinion prior to retiring from the Kentucky Court of Appeals effective December 31, 2017. Release of this opinion was delayed by administrative handling.

ACREE, JUDGE: Christian Caudill, individually, as co-guardian with Nancye Yost of Kristen Caudill and Leslie Caudill, and as an administrator of the Estate of Zachariah Caudill (collectively, "Caudill") appeals the Pike Circuit Court's July 18, 2016 summary judgment in favor of appellees William R. Johnson and Johnson Law Firm, P.S.C. (collectively, Johnson). We must decide if the circuit court erred in finding the doctrine of *res judicata* bars this action. We see no error, and affirm.

FACTS AND PROCEDURE

A prior opinion of this Court involving these parties and this case describes much of the relevant factual and procedural history. *Caudill v. Johnson*, 2014-CA-000797-MR, 2015 WL 4498788, at *1 (Ky. App. July 24, 2015). We adopt the facts extensively from that opinion.

On December 9, 2008, Christian Caudill and his three children were passengers in a vehicle driven by Ernest Johnson. Another vehicle, driven by Elizabeth Stacy and owned by Robert Shelton, struck that vehicle. Ernest and one of the children, Beau Caudill, were killed in the accident. The other passengers suffered significant injuries. The following day, Caudill retained the services of William Johnson to pursue the claims.

Stacy's vehicle was uninsured. Johnson identified three potential sources from which to recover damages. Ernest's vehicle was covered by a policy with GEICO with a $300,000 limit. Caudill was covered by two policies through

Kentucky Farm Bureau (KFB). One was a personal policy and the other one was issued to Caudill's business, Phoenix Consultants. Both policies provided underinsured (UIM) and uninsured (UM) motorist coverage.

Caudill was appointed as administrator of the Estate of Beau Caudill, and as guardian for the minor children, Kristen and Luke Caudill. Thereafter, on January 8, 2009, Johnson filed a complaint on Caudill's behalf (Action No. 09-CI-00033). The complaint[2] asserted claims against Stacy,[3] Shelton, GEICO, and KFB.

Discovery then proceeded on the claims. KFB conceded coverage under Caudill's personal policy, which had limits of $25,000 per person/$50,000 per accident. However, KFB took the position that the larger policy in the name of Phoenix Consultants did not apply.

On June 19, 2009, the circuit court issued an order setting the case for trial. The court also directed that the parties were to participate in mediation prior to the scheduled trial. Johnson continued to seek discovery and conducted negotiations with both KFB and GEICO. KFB offered to settle for the $50,000 limits of the smaller policy, but insisted on a release of any claims under the larger policy. Johnson, on Caudill's behalf, turned down KFB's offer.

[2] An amended complaint was filed on February 6, 2009.
[3] Stacy did not respond to the complaint or to Johnson's subsequent motion seeking to take her deposition.

Johnson, on Caudill's behalf, filed an action for declaratory relief against KFB (Action No. 09-CI-001269) regarding the applicability of the corporate policy. The circuit court consolidated the two actions. Thereafter, Johnson sent out notices to take the depositions of the corporate representatives of KFB and GEICO.

Shortly before the mediation scheduled for October 21, 2009, GEICO agreed to pay its policy limits of $300,000, with $40,000 paid to the Estate of Ernest Johnson and $260,000 paid to be divided between Caudill and the children. The parties entered into a mediation agreement reflecting that settlement. KFB also agreed to pay the policy limits of $50,000 on Caudill's personal policy, and the parties executed a limited release of the claims under that policy alone.

Johnson and Caudill discussed the division of the gross proceeds of the settlement of $310,000 ($260,000 from GEICO and $50,000 from KFB). Johnson proposed, and Caudill agreed, to submit the question to the mediator. On November 12, 2009, the mediator issued an Arbitration Award dividing the proceeds, including an allocation of attorney fees. The following day, Johnson, on Caudill's behalf, filed a motion requesting the court's approval of the settlement and division of the proceeds. By separate orders entered on November 16, 2009, the court approved the settlements. Johnson received his contingency fee of $103,000 arising from this settlement.

After Johnson received the Arbitration Award, he filed motions with the circuit court and the probate court to make distributions pursuant to the settlement and Arbitration Award. But unknown to Johnson, Caudill filed motions in the guardianship proceedings for the two children. In response to these motions, the probate court entered orders appointing Caudill and his mother, Nancye Yost, as co-guardians, and providing that the settlement checks were to be deposited in a restricted account under their control. On November 30, 2009, Johnson filed a notice of his attorney's lien against the settlement proceeds.

A dispute arose between Johnson and Caudill over these orders. Eventually, the later-entered orders were modified to allow the settlement to proceed as originally established. On December 18, 2009, Caudill sent a letter terminating Johnson as counsel of record in both actions. Shortly thereafter, Johnson filed motions withdrawing as counsel.

Caudill did not retain new counsel, but attempted to negotiate directly with KFB. On April 6, 2010, Caudill sent an email to the customer service portion on KFB's website. A KFB representative contacted Caudill and requested additional documentation regarding the policy issued to Phoenix Consultants. KFB ultimately agreed to pay the $300,000 limits of that policy, and Caudill agreed to dismiss any further claims against KFB, including a potential bad faith claim.

Upon learning of Caudill's settlement with KFB, Johnson filed a motion to enforce his attorney's lien against these settlement proceeds. He also argued that Caudill's actions in probate court amounted to a violation of the Arbitration Award which allocated attorney fees from the prior settlement. The circuit court directed Caudill to deposit the $300,000 from the most recent settlement with the court clerk, reserving the allocation of the funds and enforcement of Johnson's lien for later adjudication.

On September 29, 2011, Caudill filed a motion requesting Johnson to quantify his attorney's lien. The next day, on September 30, 2011, Caudill filed a new complaint initiating this action. Therein, Caudill alleged:

- An automobile accident occurred on December 9, 2008 in which Caudill and his wards were injured and his son, Beau, killed;

- Johnson, in violation of KRS[4] 21A.300 and SCR[5] 3.130(7.10), directly and improperly solicited Caudill for purposes of obtaining professional employment relating to a civil action and claim for damages arising out of that traffic accident;

- Johnson accomplished the improper solicitation by a phone call around five or six o'clock in the afternoon following the night of the accident and then appearing at the local hospital without any solicitation by Caudill whatsoever;

[4] Kentucky Revised Statutes.
[5] Kentucky Supreme Court Rules.

- Caudill paid Johnson $100,000 in attorney's fees in the underlying personal-injury civil action;

- Johnson shall deem to have waived and forfeited those fees under SCR 3.130(7.10) and the fees should be returned to Caudill;

- Johnson agreed to release an attorney's lien filed November 29, 2009 but, instead of releasing the lien, has continued to assert it for $100,000;

- Proceedings for the enforcement of the attorney's lien were pending in the underlying personal-injury action, and such sum, as determined to be the value of Johnson's services, should be deemed waived, forfeited, and ordered returned to Caudill;

- The contingency contract between Johnson and Caudill was induced by a fraudulent misrepresentation on the part of defendant William Johnson that Caudill was in fact hiring the Law Firm of Gary C. Johnson, which the defendant, William Johnson, knew not to be true.

- There is no contingency fee agreement between Kristen Caudill, Leslie Caudill, or the Estate of Beau Caudill, in violation of SCR 3.130-1.5(c), because Johnson undertook representation of Kristen, Leslie, and the Estate of Beau at a time when no lawful personal representative or guardian had been appointed to contract with Johnson.

(R. 2-4).

Turning back to the underlying personal injury/wrongful death case, the circuit court conducted an evidentiary hearing in late 2012 on the amount and enforceability of Johnson's attorney's lien against the $300,000 proceeds from

Caudill's settlement of the claims arising under the policy issued to Phoenix Consultants. Johnson raised a defense that he did not improperly solicit employment from Caudill. The circuit court entered findings of fact, conclusions of law and a judgment on June 27, 2013, finding, as it relates to this appeal:

> Approximately one day after the accident, one of Mr. Caudill's family members, Camella "Cam" Yost, called Mr. Johnson's receptionist. A note reflecting that call to Mr. Johnson's receptionist was filed as page 480 in Johnson Composite Exhibit 1. The family member stated that she was calling on behalf of Mr. Caudill and indicated that Mr. Caudill wanted legal representation and was expecting a call. Mr. Johnson was given the cell phone number of Mr. Caudill's brother in law since Mr. Caudill had lost his cell phone in the motor vehicle collision.
>
> Mr. Johnson, as requested, called that cell phone and spoke with Mr. Caudill. Mr. Caudill indicated to Mr. Johnson that he was expecting Mr. Johnson's call and that Mr. Caudill was seeking legal representation for himself and his children. Mr. Johnson indicated that there would need to be investigative work, including talking to witnesses and inspection of the accident scene. Mr. Caudill invited Mr. Johnson to meet him at the hospital where two of Mr. Caudill's children were receiving medical care. Mr. Johnson indicated that there were papers that would need to be signed before Mr. Johnson could begin working the case. The contingent fee arrangements signed by Mr. Caudill were filed on pages 430 to 433 of Johnson Composite Exhibit 1.
>
> The Court finds that Mr. Caudill, through a family member, initiated the telephone call to Mr. Johnson's office, and that Mr. Johnson did not initiate any unsolicited contact with Mr. Caudill.

> The Court further finds that Mr. Johnson did not tell Mr. Caudill that he worked for Gary Johnson and that Mr. Caudill never had any discussions with Mr. Johnson about Mr. Johnson not being associated with the Gary Johnson law firm at the time Mr. Caudill retained Mr. Johnson, and that Mr. Caudill never told Mr. Johnson that Mr. Caudill thought that he was hiring the Gary Johnson law firm.

The circuit court further found that Johnson did not tell Caudill that he (Johnson) was going to release his attorney's lien, and that Caudill terminated Johnson without good cause in December 2009 and that he did so in bad faith and in violation of his obligations under the Arbitration Agreement.

Based upon these findings and others, the circuit court found that Johnson was entitled to a *quantum meruit* recovery of attorney fees equal to one-third of the remaining $300,000 gross settlement proceeds, or $100,000. The circuit court also concluded, as a matter of law that: Johnson did not misrepresent his law firm status to Caudill; the subsequent appointment of Caudill as guardian for his two surviving children and as administrator for the Estate of Beau Caudill related back and ratified the contingent fee agreements executed by Caudill on behalf of the children and the Estate of Beau Caudill; and Johnson did not improperly solicit employment from Caudill. (R. 116).

Caudill, displeased with the circuit court's decision, appealed to this Court. The central issue in that opinion concerned the circuit court's enforcement

of Johnson's attorney's lien against the $300,000 in settlement proceeds from the KFB commercial policy. We affirmed the circuit court's findings *in toto*.

Upon receiving this Court's opinion, Johnson moved for summary judgment in this case on grounds that the *res judicata* and collateral estoppel consequences of the legal and factual determinations made by the circuit court in the underlying personal-injury case and affirmed by this Court on appeal precluded Caudill from producing evidence warranting a judgment in his favor in this matter. The circuit court agreed and, by order entered July 18, 2016, granted summary judgment in favor of Johnson. Caudill, again displeased, again appealed.

STANDARD OF REVIEW

Summary judgment is proper where there exists no genuine issue of material fact and movant is entitled to judgment as a matter of law. *Carter v. Smith*, 366 S.W.3d 414, 419 (Ky. 2012). It involves only questions of law with the simple determination of whether a fact question exists. *Allstate Insurance Company v. Smith*, 487 S.W.3d 857, 860 (Ky. 2016). Our review is *de novo*. *Furlong Development Co., LLC v. Georgetown-Scott County Planning and Zoning Commission*, 504 S.W.3d 34, 37 (Ky. 2016).

ANALYSIS

Caudill takes issue with the circuit court's grant of summary judgment based upon *res judicata*. He argues that claim preclusion does not apply because

there is no identity of the two causes of action, and issue preclusion does not apply because the issues presented in the attorney's lien dispute differ from those in this action, and thus, not all of the requirements of the doctrine barring litigation are met. We are not persuaded.

"The doctrine of *res judicata* 'stands for the principle that once the rights of the parties have been finally determined, litigation should end.'" *Coomer v. CSX Transp., Inc.*, 319 S.W.3d 366, 371 (Ky. 2010) (quoting *Slone v. R & S Mining, Inc.*, 74 S.W.3d 259, 261 (Ky. 2002)). The doctrine "has the dual purpose of protecting litigants from the burden of relitigating an identical issue [. . .] and of promoting judicial economy by preventing needless litigation." *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed. 2d 552 (1979) (citing *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 328-29, 91 S.Ct. 1434, 1442-43, 28 L.Ed.2d 788 (1971)).

Res judicata encompasses both issue and claim preclusion and is not to be used as synonymous with either individually, but rather equally with both. *Yeoman v. Commonwealth, Health Policy Bd.*, 983 S.W.2d 459, 465 n.2 (Ky. 1998). "Claim preclusion bars a party from re-litigating a previously adjudicated cause of action and entirely bars a new lawsuit on the same cause of action." *Id.* Issue preclusion, on the other hand, prevents the parties from relitigating identical issues actually litigated and finally decided in an earlier action. *Id.* "[A]n issue

may take the form of a separate and discrete question of law or fact, or a combination of both." *Issue*, Black's Law Dictionary (10th ed. 2014).

It is unclear whether the circuit court in this case granted summary judgment on the basis of issue preclusion or claim preclusion. Because issue preclusion appears most applicable, we shall examine it first.

Again, issue preclusion is used "to prevent a defendant from relitigating issues resolved in the earlier proceeding." *Parklane*, 439 U.S. at 326, 99 S.Ct. at 649. For a party to successfully assert the doctrine, he or she must establish the following elements: "(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; (4) a prior losing litigant." *Moore v. Commonwealth*, 954 S.W.2d 317, 319 (Ky. 1997) (citing *Sedley v. City of West Beuchel*, 461 S.W.2d 556, 559 (Ky. 1970)). Absent from issue preclusion is the mutuality element; that is, the parties do not have to be identical in each action. *Miller v. Administrative Office of Courts*, 361 S.W.3d 867, 872-73 (Ky. 2011); *Moore v. Commonwealth*, 954 S.W.2d 317, 319 (Ky. 1997). "[A] party is bound by a prior adjudication against it on an issue if the prior issue was an essential component of that action, even though the parties were not completely identical in each action." *Miller*, 361 S.W.3d at 872-73 (citation omitted).

Further, if the two suits concern the same controversy, then the previous suit is deemed to have adjudicated every matter which was or could have been brought in support of the cause of action. *Yeoman*, 983 S.W.2d at 465. "The key inquiry in deciding whether the lawsuits concern the same controversy is whether they both arise from the same transactional nucleus of facts." *Id.*

Caudill argues the lawsuits do not concern the same controversy because the attorney's lien dispute focused on whether Johnson was entitled to a *quantum meruit* award from the $300,000 in settlement proceeds from the KFB commercial policy, while this lawsuit focuses on whether Johnson should be required to disgorge or forfeit the $100,000 received in attorney's fees resulting from the first settlement with GEICO and KFB related to the personal policy. Caudill takes a narrow and unsupported view of the same controversy element. Both lawsuits clearly arise from the same transactional nucleus of facts – Johnson's representation of Caudill related to the 2008 traffic accident. The underlying facts and circumstances before the circuit court in this matter are identical to those at issue and ultimately decided by the circuit court in the attorney's lien dispute.

The key factual issues raised and challenged by Johnson in his complaint in this case include whether Johnson: improperly solicited Caudill; agreed to release his attorney's lien; induced legal representation by fraudulently

misrepresenting that Caudill was hiring Gary Johnson; and whether Johnson and Caudill entered into a valid contingent fee contract with respect to the children. All these issues were raised, litigated, and decided adversely to Caudill in the attorney's lien proceeding. The circuit court made very specific factual findings related to each of these issues in rendering its final decision on the merits. It found: Johnson did not improperly solicit employment from Caudill; Johnson did not agree to release his attorney's lien; Johnson did not mispresent his law firm status to Caudill; and the subsequent appointment of Caudill as guardian of his two surviving children and administrator for the Estate of Beau Caudill related back and ratified the contingent fee agreements executed by Caudill. Caudill was the losing litigant in that proceeding and, in light of the extensive evidentiary hearing conducted by the circuit court, we are confident Caudill had a full and fair *opportunity* to litigate these issues.

In sum, we are persuaded that the elements of issue preclusion are satisfied. All the material factual issues in the present action were litigated and necessary to the circuit court's ultimate decision to award Johnson a *quantum meruit* award related to his attorney's lien. The decision constitutes a final decision on the merits, and unquestionably labels Caudill as the losing party. We agree with the circuit court that its prior decision conclusively established certain material facts regarding Johnson's conduct and operates preclusively in this

subsequent civil proceeding. Therefore, summary judgment for Johnson was appropriate because no genuine issues of material fact remained regarding Johnson's role and representation of Caudill related to the 2008 traffic accident, and Caudill cannot prevail, then, as a matter of law.

CONCLUSION

Accordingly, we affirm the Pike Circuit Court's July 18, 2016 order granting summary judgment in favor of Johnson.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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