

DA 18-0677

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 178N

WILLIAM M. RUSSELL,

Plaintiff and Appellant,

v.

360 Reclaim, LLC, a Montana Limited
Liability Company,

Defendant and Appellee.

APPEAL FROM: District Court of the Eleventh Judicial District,
In and For the County of Flathead, Cause No. DV-18-733A
Honorable Amy Eddy, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

William M. Russell, Self-Represented, Dubois, Idaho

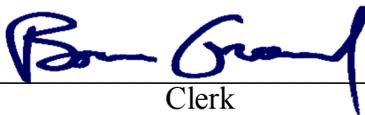
For Appellee:

Bruce A. Fredrickson, Kristin L. Omvig, Rocky Mountain Law Partners,
P.C., Kalispell, Montana

Submitted on Briefs: June 5, 2019

Decided: July 30, 2019

Filed:


Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 William M. Russell filed a complaint against 360 Reclaim, LLC, and KS Ventures, LLC, in the Eleventh Judicial District, Flathead County, claiming a right to possess foreclosed property during the redemption period. The District Court dismissed his claim based on collateral estoppel because the issue already had been determined in the prior foreclosure action between Russell and KS Ventures. We affirm.

¶3 Russell was married to Karen Smith. Smith is a principal in KS Ventures, LLC, which loaned money to Russell pursuant to a loan agreement. Smith filed to annul the marriage in October 2015. KS Ventures filed a judicial collection and foreclosure action against Russell in May 2016, seeking repayment of the loan advances and foreclosure on the deed of trust securing payment. Russell argued that he was not required to pay the advances because the loan agreement had created a joint venture between KS Ventures and Russell. The district court disagreed and issued a final judgment in March 2018, granting, among other things, a decree of foreclosure and order of sale on certain real property Russell owned in Flathead County, including property known as Parcel 4. The judgment

directed the sale of all the real property, including Parcel 4, at a sheriff's sale. The judgment provided:

The successful purchaser of Parcel(s) of Mortgaged Property at the Sheriff's Sale will be entitled to possession of said Parcel(s) during the redemption period beginning 10 days following the Sheriff's Sale.

¶4 On June 1, 2018, 360 Reclaim purchased Parcel 4. That same day, 360 Reclaim notified Russell of its intent to assume possession of Parcel 4 and demanded that he vacate the property. On June 12, 2018, 360 Reclaim obtained the assistance of the sheriff's office to remove Russell from the property and take possession of Parcel 4. Russell appealed the foreclosure action to this Court. Russell argued on appeal that the loan agreement established a joint venture and that he was not obligated to repay the money because he and Smith were partners. We affirmed the district court's order granting summary judgment to KS Ventures because Russell failed to raise a genuine issue of material fact, and the district court properly determined that there was no joint venture between KS Ventures and Russell. *KS Ventures, LLC v. Russell*, 2019 MT 4N, ¶¶ 16-17, 395 Mont. 519, 432 P.3d 715. During the pending appeal, Russell filed a petition seeking emergency relief and declaratory judgment regarding his alleged statutory rights to possession of Parcel 4 and requested a stay of the district court's proceeding and eviction. We denied his motion. *KS Ventures, LLC v. Russell*, No. DA 18-0238, Or. (Mont. Jun. 26, 2018).

¶5 Also while his appeal was pending, Russell filed this separate action in the District Court seeking possession of the property based on a number of statutory rights. 360 Reclaim moved the District Court to dismiss the matter under M. R. Civ. P. 12(b)(6).

The District Court held that Russell’s claims were barred by collateral estoppel, reasoning that the rights Russell alleged entitled him to possession were identical to those in the *KS Ventures, LLC* appeal.

¶6 The application of collateral estoppel is a conclusion of law, which this Court reviews for correctness. *Brilz v. Metro. Gen. Ins. Co.*, 2012 MT 184, ¶ 13, 366 Mont. 78, 285 P.3d 494. The doctrine of collateral estoppel, also known as issue preclusion, bars the reopening of an issue that has been litigated and resolved in a prior suit. *Baltrusch v. Baltrusch*, 2006 MT 51, ¶ 15, 331 Mont. 281, 130 P.3d 1267. Collateral estoppel has four elements: (1) the identical issue raised was previously decided in a prior adjudication; (2) a final judgment on the merits was issued in the prior adjudication; (3) the party against whom the plea is now asserted was a party or privity with a party to the prior adjudication; and (4) the party against whom preclusion is now asserted was afforded a full and fair opportunity to litigate the issue that may be barred. *McDaniel v. State*, 2009 MT 159, ¶ 28, 350 Mont. 422, 208 P.3d 817.

¶7 Russell first contends that the issue in this case is not identical to that in the previous case. Collateral estoppel extends to all questions essential to a judgment and actively determined by a prior valid judgment. *Rooney v. City of Cut Bank*, 2012 MT 149, ¶ 17, 365 Mont. 375, 286 P.3d 241. “It bars the re-litigation of determinative facts that were actually or necessarily decided in a prior action, even if they were previously decided under a different legal theory.” *Rooney*, ¶ 17. The district court held that the successful purchaser at the sheriff’s sale would be entitled to the possession of the real property ten days after

the purchase, during the redemption period. Russell alleged in his Complaint in this case that he is statutorily entitled to possess the property during the redemption period because the property is his place of residence. Russell likewise maintained in his Emergency Notice and Petition Requesting Declaratory Judgment and Order in the previous appeal that he had the statutory right to possess the property during the redemption period. The District Court did not err in holding that the issue—who has the right to possess the property during the redemption period—is “identical” in the previous case and in the case at hand.

¶8 Russell next argues that he was not afforded the opportunity to litigate his right to possession of the property. Although he “believed he was, through his pleadings, effectively requesting an opportunity to present his side to the court,” Russell claims that “at no time in the prior action was [he] ever actually and ultimately permitted that opportunity.” The burden is on the party attempting to defeat the application of collateral estoppel to establish the absence of a full and fair opportunity to litigate. *McDaniel*, ¶ 42. Russell was afforded the opportunity to challenge the right to possession after the sale of the property in the prior action. The district court’s order made clear that the purchaser was entitled to possession of the property during the redemption period. Russell could have challenged that right of possession on appeal—and did when he filed an emergency motion before this Court. Russell previously had the opportunity to litigate his right to possession and cannot litigate the same issue of possession by filing a separate complaint in a new case. The District Court correctly concluded that the fourth element of collateral estoppel was satisfied.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court's interpretation and application of the law were correct. We affirm.

/S/ BETH BAKER

We Concur:

/S/ DIRK M. SANDEFUR
/S/ INGRID GUSTAFSON
/S/ JAMES JEREMIAH SHEA
/S/ JIM RICE