

[Cite as *Rhinebolt v. Rhinebolt*, 2009-Ohio-5646.]

COURT OF APPEALS
DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FLOYD C. RHINEBOLT, JR.

Plaintiff-Appellee

-vs-

LINDA RHINEBOLT AND
FLOYD C. RHINEBOLT, SR.

Defendants-Appellants

-vs-

FIFTH THIRD BANK

Cross-Claimant-Appellee

JUDGES:

Hon. Sheila G. Farmer, P.J.

Hon. William B. Hoffman, J.

Hon. John W. Wise, J.

Case No. 09CAF03-0032

OPINION

CHARACTER OF PROCEEDING:

Appeal from Delaware County Court of
Common Pleas, Case No. 202612A

JUDGMENT:

Affirmed

DATE OF JUDGMENT ENTRY:

October 20, 2009

APPEARANCES:

For Cross-Claimant-Appellee
Fifth Third Bank

For Defendants-Appellants
Linda Rhinebolt and Floyd Rhinebolt, Sr.

K. JAMES SULLIVAN
CHRISTOPHER S. WILLIAMS
Calfee, Halter & Griswold LLP
800 Superior Avenue, Suite 1400
Cleveland, Ohio 44114

DAVID H. BIRCH
286 South Liberty Street
Powell, Ohio 43065

Hoffman, J.

{¶1} Defendants-appellants Linda Rhinebolt and Floyd Rhinebolt, Sr. appeal the March 6, 2009 Judgment Entry of the Delaware County Court of Common Pleas, Probate Division, granting summary judgment in favor of Cross-Claimant-appellee Fifth Third Bank.

STATEMENT OF THE FACTS AND CASE

{¶2} Appellants' son, Floyd Rhinebolt, Jr., had a medical procedure as a minor child which later precipitated a medical malpractice action. The medical malpractice action was settled in the amount of \$725,000.00, with Floyd Rhinebolt, Jr. receiving \$425,122.44 after costs and attorney fees. The trial court in the medical malpractice action named Appellant Linda Rhinebolt legal guardian in connection with the settlement, and ordered the funds placed in a secure account. Linda Rhinebolt opened the account at Fifth Third Bank (account number 91637049), and deposited \$425,122.44. The funds were to be held in the secure account until Floyd Rhinebolt Jr. reached the age of majority, unless the court authorized withdrawal.

{¶3} Appellants withdrew funds from the account and used the money to purchase personal items, including automobiles and a residence. The account has a remaining balance of \$4.52.

{¶4} Floyd Rhinebolt, Jr. initiated the within action in the Richland County Court of Common Pleas, Probate Division, against Appellants and Appellee Fifth Third Bank. Fifth Third Bank settled the claim against it with Floyd Rhinebolt, Jr. for \$390,000 in return for an assignment of Rhinebolt's rights against Appellants.

{¶15} Appellants were convicted of theft for the fraudulent withdrawal of the funds in the Delaware County Court of Common Pleas, Case Number 07 CR I 08 0425. In the criminal case the trial court found Appellant to be the proximate cause of Fifth Third's loss resulting from the settlement with Floyd Rhinebolt, Jr., and awarded Fifth Third full restitution from Appellants.

{¶16} Fifth Third moved the trial court for summary judgment in the within action. Via Judgment Entry of March 6, 2009, the trial court granted the motion for summary judgment in favor of Fifth Third Bank against Appellants.

{¶17} Appellants now appeal, assigning as error:

{¶18} "I. THE TRIAL COURT ERRED IN GRANTING CROSS-CLAIMANT'S MOTION FOR SUMMARY JUDGMENT."

{¶19} When reviewing a trial court's decision to grant summary judgment, an appellate court applies the same standard used by the trial court, *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35. This means we review the matter de novo, *Doe v. Shaffer*, 90 Ohio St.3d 388, 2000-Ohio-186.

{¶110} The party moving for summary judgment bears the initial burden of informing the trial court of the basis of the motion and identifying the portions of the record which demonstrate the absence of a genuine issue of fact on a material element of the non-moving party's claim, *Drescher v. Burt* (1996), 75 Ohio St.3d 280. Once the moving party meets its initial burden, the burden shifts to the non-moving party to set forth specific facts demonstrating a genuine issue of material fact does exist, *Id.* The non-moving party may not rest upon the allegations and denials in the pleadings, but

instead must submit some evidentiary material showing a genuine dispute over material facts, *Henkle v. Henkle* (1991), 75 Ohio App.3d 732.

{¶11} Appellants assert the trial court erred in finding Appellants were collaterally estopped from relitigating the issue of their liability to Fifth Third Bank.

{¶12} To successfully assert collateral estoppel, a party must plead and prove the following elements: (1) the party against whom estoppel is sought was a party or in privity with a party to the prior action, (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 was admitted or actually tried and decided, and necessary to the final judgment in the prior action, and (4) the issue is identical to the issue involved in the prior suit. *LaBonte v. LaBonte* (1988), 61 Ohio App.3d 209, 216.

{¶13} In *Wloszek v. Weston, Hurd, Fallon, Paisley & Howley*, 8th Dist. No. 82412, 2004-Ohio-146, the Eighth District Court of Appeals held “[a] criminal conviction is conclusive proof and operates as an estoppel on defendants as to the facts supporting the conviction in a subsequent civil action.” *Id.* at 40. Estoppel extends only to questions “directly put in issue and directly determined” in the criminal prosecution. *Id.*

{¶14} Thus, contrary to Appellants’ assertions, “an issue conclusively determined in a criminal case may have preclusive effect in a later civil case.” *Frank v. Simon*, 6th Dist. No. L-06-1185, 2007-Ohio-1324, at 14. “Whether the issue was ‘actually and necessarily litigated’ in the prior criminal action is more relevant than whether the party seeking to use collateral estoppel was a bound party to the criminal action.” *Id.*

{¶15} For collateral estoppel purposes, the party against whom res judicata is asserted must have been a party to the prior judgment, not the party asserting res judicata. *Thompson v. Wing* (1994), 70 Ohio St.3d 176.

{¶16} Here, Appellants were convicted of theft for fraudulently withdrawing the funds in the Fifth Third Bank account. The trial court in this case properly determined the issue was actually and directly litigated in the criminal proceeding, passed upon and determined by that trial court, and Appellants were party defendants in the criminal action. Accordingly, the trial court did not err in granting summary judgment in favor of Fifth Third Bank.

{¶17} The March 6, 2009 Judgment Entry of the Delaware County Court of Common Pleas, Probate Division, is affirmed.

By: Hoffman, J.

Farmer, P.J. and

Wise, J. concur

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE

IN THE COURT OF APPEALS FOR DELAWARE COUNTY, OHIO
FIFTH APPELLATE DISTRICT

FLOYD C. RHINEBOLT, JR.	:	
	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
	:	
LINDA RHINEBOLT AND	:	
FLOYD C. RHINEBOLT, SR.	:	
	:	
Defendants-Appellants	:	
	:	Case No. 09CAF03-0032
-vs-	:	
	:	
FIFTH THIRD BANK	:	
	:	
Cross-Claimant-Appellee	:	

For the reasons stated in our accompanying Opinion, the March 6, 2009 Judgment Entry of the Delaware County Court of Common Pleas, Probate Division, is affirmed. Costs to Appellants.

s/ William B. Hoffman
HON. WILLIAM B. HOFFMAN

s/ Sheila G. Farmer
HON. SHEILA G. FARMER

s/ John W. Wise
HON. JOHN W. WISE