

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES MEREDITH CUMMINGS,

Plaintiff–Appellant,

v

BALFOUR PEISNER,

Defendant–Appellee.

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UNPUBLISHED

August 9, 1996

No. 181539

LC No. 94-420536

Before: Reilly, P.J., and Cavanagh and R.C. Anderson,\* JJ.

PER CURIAM.

In this legal malpractice action, plaintiff appeals as of right from the order granting defendant’s motion for summary disposition pursuant to MCR 2.116(C)(7) on the basis that plaintiff’s claim was barred by collateral estoppel. We affirm.

Defendant represented plaintiff in a criminal proceeding in which plaintiff was convicted of second-degree murder, MCL 750.317; MSA 28.549. The trial court held that plaintiff’s legal malpractice claim was collaterally estopped by a determination that plaintiff had received the effective assistance of counsel in the underlying criminal case. The doctrine of collateral estoppel prevents the relitigation of issues in a separate, subsequent cause of action which were addressed and determined in a prior proceeding. *Schlumm v Terrence J O’Hagan, PC*, 173 Mich App 345, 354; 433 NW2d 839 (1988). Where there has been a full and fair determination in a criminal proceeding that a defendant received the effective assistance of counsel, the attorney-defendant in a subsequent legal malpractice action may defensively assert collateral estoppel to bar the plaintiff’s claim. *Schlumm, supra* at 355-356; *Knoblauch v Kenyon*, 163 Mich App 712, 725; 415 NW2d 286 (1987).

Plaintiff argues that collateral estoppel cannot bar his claim because there was never a finding in the criminal proceeding that he had received the effective assistance of counsel, nor was an evidentiary hearing held. We disagree. In December of 1984, plaintiff, acting in pro per, filed a Delayed Motion for New Trial or in the Alternative for Evidentiary Hearing in the underlying criminal case. Detroit

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Recorder's Court Judge John P. O'Brien denied the motion on December 21, 1984, and this Court denied leave to appeal that denial on April 3, 1985. An order of summary disposition is a judgment on the merits sufficient to permit the application of collateral estoppel. *Detroit v Qualls*, 434 Mich 340, 356 n 27; 454 NW2d 374 (1990). In the present case, the final order denying plaintiff's motion for a new trial or an evidentiary hearing was, at minimum, a determination that plaintiff had not demonstrated any basis upon which he could pursue a claim that he was denied the effective assistance of counsel. In addition, this Court applied collateral estoppel in *Schlumm*, where the plaintiff argued that he had been denied the effective assistance of counsel in his motion for new trial and his brief to this Court, and it did not appear that an evidentiary hearing had been held. See *Schlumm, supra* at 356. Accordingly, we conclude that the trial court properly granted defendant's motion for summary disposition.

Affirmed.

/s/ Maureen Pulte Reilly

/s/ Mark J. Cavanagh

/s/ Robert C. Anderson