

STATE OF MICHIGAN  
COURT OF APPEALS

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TODD MATTHEW CELLEY,

Plaintiff-Appellant,

v

LYNN B. D'ORIO,

Defendant-Appellee.

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UNPUBLISHED

August 1, 2006

No. 269117

Washtenaw Circuit Court

LC No. 04-001036-NH

Before: Davis, P.J., and Sawyer and Schuette, JJ.

PER CURIAM.

In this legal malpractice action, plaintiff, acting in propria persona, appeals as of right from the circuit court's order granting summary disposition to defendant, who had unsuccessfully defended plaintiff in a criminal case. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

Following a jury trial in the district court, plaintiff was convicted of third-degree retail fraud, MCL 750.356d(4)(b), and assault and battery, MCL 750.81. Plaintiff successfully moved the circuit court to remand this case to the district court for a *Ginther*<sup>1</sup> hearing to develop his claim of ineffective assistance of counsel. The district court in turn concluded that the tactics of plaintiff's defense attorney of record, the instant defendant, were strategically sound. The court additionally concluded that plaintiff failed to show any prejudice from defendant's performance.

After the *Ginther* hearing, the circuit court affirmed plaintiff's convictions, its opinion included detailed analysis, and rejection, of plaintiff's claim of ineffective assistance.

Plaintiff sought leave from this Court to appeal the circuit court's affirmance, asserting ineffective assistance of counsel among the issues raised. This Court denied plaintiff's

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

application, “for lack of merit on the grounds presented.” *People v Celley*, unpublished order of the Court of Appeals, entered May 1, 2006 (Docket No. 268116).<sup>2</sup>

Plaintiff filed this legal malpractice action on October 5, 2004. The trial court had dismissed the case on the ground that the failure of plaintiff’s claim of ineffective assistance in connection with his criminal trial collaterally estopped relitigation of that claim in a subsequent civil action.

We review a trial court’s decision on a motion for summary disposition de novo as a question of law. *Artd v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). The applicability of collateral estoppel also presents a question of law, calling for review de novo. *Barrow v Pritchard*, 235 Mich App 478; 597 NW2d 853 (1999).

Collateral estoppel precludes relitigation of an issue in a different, subsequent action between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding. See *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990); 1 Restatement Judgments, 2d, § 27, p 250. The doctrine bars relitigation of issues where the parties had a full and fair opportunity to litigate those issues in an earlier action. *Arim v General Motors Corp*, 206 Mich App 178, 195; 520 NW2d 695 (1994).

In *Barrow, supra*, this Court concluded that the standards governing claims of ineffective assistance of counsel in criminal proceedings, and claims of legal malpractice in connection with the same representation, “are sufficiently similar in substance to support the application of the defense of collateral estoppel.” *Id.* at 484-485. In reaching this conclusion, this Court further held that “mutuality of estoppel is not necessary before a defendant in a legal malpractice action can use the defense of collateral estoppel.” *Id.* at 485. The conclusion in *Barrow, supra*, that a party who has unsuccessfully litigated a claim of ineffective assistance in criminal proceedings is precluded from challenging the same representation in a civil malpractice action is binding on this Court. MCR 7.215(J)(1).

Plaintiff repeatedly attacks the conclusions of the district court and circuit court judges involved in his criminal case. But the factual and legal conclusions reached now stand as the law of the case, and are not subject to review in this appeal. See *Webb v Smith*, 224 Mich App 203, 209; 568 NW2d 378 (1997). Plaintiff additionally reiterates his complaints that defendant failed to call certain witnesses, or pursue certain theories, but fails to explain how the dictates of *Barrow, supra*, foreclosing relitigation of those issues might be avoided.

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<sup>2</sup> We inadvertently released an opinion in this case after receiving defendant’s supplemental brief addressing this order, but before receiving plaintiff’s response. In fact, while we appreciate the parties bringing the order to our attention, we were aware of the order before receiving defendant’s motion and had fully analyzed its effect on this case. Neither party’s supplemental filing changed our treatment of this case.

Because the question of counsel's competence was fully and fairly litigated in connection with plaintiff's criminal convictions, the trial court in this case correctly held that plaintiff is precluded from litigating them in this action.

Affirmed.

/s/ Alton T. Davis  
/s/ David H. Sawyer  
/s/ Bill Schuette