

STATE OF MICHIGAN
COURT OF APPEALS

LEROY MIX, HELEN MIX, JANICE MIX, JOHN
MIX, VALERIE MIX, EMMA MIX, JOHN
FRENCH and MARGARET FRENCH,

UNPUBLISHED
January 16, 1998

Plaintiffs-Appellants,

v

DAVID M. HOOVER, RICHARD CASCARILLA,
NICHOLAS CASCARILLA & ASSOCIATES,

No. 197145
Ingham Circuit Court
LC No. 89-064743-NM

Defendants-Appellees,

and

MICHAEL FRANCK, Personal Representative of
the Estate of LEO FARHAT, MAX R. HOFFMAN,
JR., FARHAT, STORY & KRAUS, P.C., JOSEPH
FARHAT III and FARHAT, TYLER &
ASSOCIATES, P.C.,

Defendants.

Before: Fitzgerald, P.J., and O'Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiffs appeal as of right the orders granting summary disposition in favor of defendant David Hoover and defendants Richard Cascarilla and Nicholas Cascarilla & Associates (Cascarilla). The trial court granted summary disposition in favor of Hoover pursuant to MCR 2.116(C)(7) and (8) and, by agreeing with Cascarilla's argument that collateral estoppel barred plaintiffs' legal malpractice claims, the court implicitly granted summary disposition in favor of Cascarilla pursuant to 2.116(C)(7). We affirm.

Plaintiffs' claims against Hoover and Cascarilla arise from defendants' involvement in the settlement of a wrongful death action for the estate of Joan M. Hoover. Joan was defendant Hoover's

wife and was the daughter, sibling, and granddaughter of the various plaintiffs. Joan died in 1985 as the result of medical malpractice. Hoover, as the personal representative of his wife's estate, subsequently negotiated a court-approved 1988 settlement of the estate's wrongful death claim. Plaintiffs retained defendant Cascarilla to guard their interest in the wrongful death settlement. Before final disposition of the settlement proceeds was made, plaintiff Leroy Mix consented on the record to plaintiffs' share of the settlement. Plaintiffs subsequently suspected that Hoover and his children had received what plaintiffs considered a disproportionate share of the settlement, and sought, within the context of the underlying wrongful death action, to set aside their consent to the settlement. The trial court held extensive evidentiary hearings and concluded that plaintiffs had validly consented to their share of the settlement disposition. The trial court's decision was affirmed.¹

Having failed to withdraw their consent to the settlement distribution, plaintiffs filed their original complaint in the present action, alleging breach of fiduciary duty, negligence, and fraud against Hoover and legal malpractice, breach of contract, and breach of fiduciary duty against Cascarilla and the attorneys for Joan Hoover's estate, Leo Farhat (whose estate was represented in this action by Michael Franck), Max R. Hoffman, Jr., Farhat, Story & Kraus, P.C., Joseph Farhat III and Farhat, Tyler & Associates, P.C. Defendant Hoover's and the Farhat defendants' motion for summary disposition was granted by the trial court. Plaintiffs appealed to this Court, which affirmed the trial court's ruling in all respects with the exception of the trial court's conclusion that Hoover did not owe any fiduciary duty to plaintiffs. Therefore, because this Court concluded that Hoover did owe a fiduciary duty to plaintiffs, this Court remanded for a determination of whether Hoover breached his fiduciary duty.² On remand, both Hoover's and Cascarilla's motions for summary disposition of all of plaintiffs' claims were granted.

Plaintiffs first argue that this Court's prior finding that the trial court had erred in granting summary disposition in favor of Hoover regarding whether he breached his fiduciary duty precluded the trial court from granting summary disposition on remand. We disagree. This Court previously concluded that the trial court had erred by concluding that Hoover did not owe any fiduciary *duty* to plaintiffs, and therefore this Court remanded for a determination whether Hoover had *breached* his duty. The trial court's grant of summary disposition in favor of Hoover on remand involved the issue of whether Hoover breached his duty. Thus, the trial court's decision to grant summary disposition on remand did not violate this Court's prior opinion.

Upon de novo review, we conclude that the trial court properly granted summary disposition on remand in favor of Hoover on the ground that collateral estoppel precluded plaintiffs' claim for breach of fiduciary duty. Plaintiffs previously claimed in the underlying medical malpractice action that their consent to the settlement was invalid because Hoover breached his fiduciary duty to them in failing to protect their interests in the proceeds. Both parties had the opportunity to litigate the breach issue in the underlying action, and this Court could not have conclusively determined that plaintiffs had validly consented to their distribution share without examining Hoover's conduct and finding that Hoover had properly executed his fiduciary duty toward plaintiffs. Thus, the issue was actually litigated and necessarily determined in the underlying action. *People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990). Indeed, this Court stated in its previous opinion in the underlying action that

while it is true that the personal representative owes a fiduciary duty to claimants of an estate, . . . claimants have failed to show any breach of that duty in this case. [*Hoover, supra* n 1 at slip op p 3.]

The claims made in the present case are identical to those made in the underlying case and may not be relitigated.

Plaintiffs next argue that the trial court erred by granting Hoover sanctions in the amount of \$1,500. We disagree. Plaintiffs' repeated presentation of previously litigated claims that had already been affirmed by this Court constitutes a frivolous pleading for which sanctions may be imposed pursuant to MCR 2.114(D). See, e.g., *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 221; 561 NW2d 854 (1997). Because Hoover incurred costs in excess of \$1,500 in responding to plaintiffs' frivolous claims, we conclude that the award of sanctions was not an abuse of the trial court's discretion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

Finally, plaintiffs contend that the trial court erred by concluding that collateral estoppel barred plaintiffs' claims against Cascarilla. We agree. Plaintiffs first alleged legal malpractice by Cascarilla in the underlying medical malpractice action when they attempted to nullify their consent to the wrongful death settlement distribution. Although plaintiffs' legal malpractice allegations also involve Cascarilla's representation of plaintiffs during the wrongful death settlement proceedings, collateral estoppel does not preclude plaintiffs from bringing their malpractice allegations because this issue was not previously litigated by the same parties in the previous proceeding. *Gates, supra*. Plaintiffs had discharged Cascarilla as their attorney by the time they made their first malpractice allegations against him, and Cascarilla possessed no other stake or interest of any kind in the outcome of plaintiffs' challenge to the validity of their consent. Therefore, Cascarilla was not a party in the prior proceeding when the malpractice issue first appeared. *Husted, supra*.

We conclude, however, that the trial court reached the correct result for the wrong reason. *Smith v Globe Life Ins Co*, 223 Mich App 264, 278; 565 NW2d 877 (1997). Plaintiffs failed to support any of their eleven allegations of legal malpractice with specific evidence. Cascarilla produced evidence tending to refute plaintiffs' allegations, and plaintiffs failed to file a response to Cascarilla's motion for summary disposition and failed to otherwise allege specific facts in support of their malpractice claim even though the trial court gave plaintiffs sixty days after its contingent grant of summary disposition to Cascarilla to allege these facts. Without evidence supporting plaintiffs' allegations of malpractice to contradict Cascarilla's evidence, no record existed regarding plaintiffs' malpractice claim on which reasonable minds could differ. Therefore, we affirm the trial court's decision because summary disposition could properly have been granted in favor of Cascarilla pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

¹ *Hoover v Rajan*, unpublished opinion per curiam of the Court of Appeals, issued May 26, 1992 (Docket Nos. 128047, 129998).

² *Mix v Franck*, unpublished opinion per curiam of the Court of Appeals, issued July 27, 1994 (Docket No. 141606).