

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM BROWN and CHRISTY BALL,

Plaintiffs-Appellants,

v

KENNETH J. WASSUS, LIEUTENANT
STEWART, OFFICER FOLEY, OFFICER C. L.
MILLER, OFFICER L. JENKINS, LIEUTENANT
HEINS, SERGEANT DAVIS, LIEUTENANT
LUKE DAVIS, DETECTIVE CHURCHILL, D.
COLLARD, DEPUTY ATCHINSON, and
DETECTIVE GALLARO,

Defendants-Appellees.

UNPUBLISHED

March 22, 2002

No. 226469

Monroe Circuit Court

LC No. 98-008743-CZ

Before: Saad, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the circuit court's order granting defendants' motions for summary disposition. We affirm.

I. Factual and Procedural Background

This case arises from the search of a residence in the City of Monroe, where police discovered cocaine and drug trafficking paraphernalia. As a result of the search, plaintiff Brown was charged with cocaine possession and with maintaining a drug house. However, because the issuing magistrate had inadvertently failed to sign the original copy of the search warrant, the district court dismissed the criminal charges against Brown, based on a finding that the warrant had been invalid. In the subsequent forfeiture proceeding, plaintiff Ball claimed an ownership interest in much of the seized property. Relying on the district court's conclusion that the search warrant was invalid for lack of a judicial signature, the circuit court dismissed the forfeiture proceeding. Police subsequently returned to Ball those items she had claimed in the forfeiture proceeding.

Plaintiffs subsequently filed a civil suit against each of the police officers involved in the search. Plaintiffs alleged a violation of 42 USC 1983, as well as false arrest, false imprisonment, assault and battery, malicious prosecution, and conversion. Defendants removed the case to federal district court, which granted summary disposition to defendants on plaintiffs' federal law

claim. Upon remand of the state claims, the circuit court concluded that probable cause had existed to support the search and concluded that the search warrant was valid despite the lack of a judicial signature. Accordingly, the circuit court granted defendants' motions for summary disposition. Plaintiffs appeal as of right from that decision.

II. Collateral Estoppel

Plaintiffs first argue that the doctrine of collateral estoppel precluded the circuit court from concluding that the search warrant was valid. Plaintiffs point to the decision rendered by the district court in the criminal proceeding and to the decision rendered by the circuit court in the forfeiture proceeding. Because both of those courts concluded that the search warrant was invalid for lack of a judicial signature, plaintiffs argue that the circuit court in the instant action was bound to reach the same conclusion. We disagree.

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties where the prior proceeding culminated in a valid, final judgment and the issue was (1) actually litigated, and (2) necessarily determined. [*People v Gates*, 434 Mich 146, 154; 452 NW2d 627 (1990) (citations and footnotes omitted).]

One of the most "critical factors" in applying collateral estoppel is determining whether "the same parties are involved in both proceedings," i.e., "whether the respective litigants were parties or privy to a party to an action in which a valid judgment has been rendered." *Id.* at 155-156. In *Howell v Vito's Trucking & Excavating Co*, 386 Mich 37, 43; 191 NW2d 313 (1971), our Supreme Court explained the factors to be weighed in making such a determination:

[O]nly parties to the former judgment or their privies may take advantage of or be bound by it. A party in this connection is one who is 'directly interested in the subject matter, and had a right to make defense, or to control the proceedings, and to appeal from the judgment.' A privy is one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession, or purchase. [Citations omitted.]

In the present case, it is clear that none of the defendants were parties to either the criminal proceeding or the forfeiture proceeding. Although defendants may have been *witnesses* in those prior proceedings, they had no "right to make defense, or to control the proceedings, and to appeal from the judgment," in either of the previous cases. *Id.* Accordingly, the doctrine of collateral estoppel did not require the circuit court to apply the earlier holdings of the district and circuit courts regarding the validity of the search warrant.

III. Validity of the Search Warrant

Plaintiffs next argue that the search warrant was invalid, under the holdings of *People v Goff*, 401 Mich 412; 258 NW2d 57 (1977); *People v Locklear*, 177 Mich App 331; 441 NW2d 73 (1989); and *People v Hentkowski*, 154 Mich App 171; 397 NW2d 255 (1986). Plaintiffs' argument is based on the fact that *Goff*, *Locklear*, and *Hentkowski* stated the law in Michigan at the time the search occurred, and at the time the district court dismissed the criminal charges

against plaintiff Brown. In response, defendants rely on *People v Barkley*, 225 Mich App 539; 571 NW2d 561 (1997), which this Court issued before the instant circuit court rendered its decision granting defendants' motions for summary disposition. We conclude that plaintiffs' argument is without merit, and that *Barkley* governs the instant case. Under that holding, defendants' search of plaintiffs' residence was supported by a valid search warrant.

In *Goff*, *supra* at 413-414, our Supreme Court concluded "as a matter of policy," rather than a matter of statutory interpretation, that a "search warrant based on an unsigned affidavit will be invalid." This Court followed *Goff* in *Hentkowski*, *supra* at 175, where the magistrate had signed the police officer's supporting affidavit, but had "inadvertently failed" to sign the search warrant itself. Concluding that "a search and seizure which takes place pursuant to an unsigned document" does not comply with constitutional requirements, the *Hentkowski* Court concluded that the resulting search and seizure had been invalid. *Id.* at 176, 179. This Court followed *Hentkowski* in *Locklear*, *supra* at 332-333, where both the police officer and the magistrate signed the affidavit in support of the search warrant, but the magistrate's signature did not appear on the search warrant. In that case, the magistrate testified that he had signed the affidavit "with the intention of authorizing the search warrant." *Id.* at 333. On appeal, this Court followed *Hentkowski* and held that, "for a valid warrant to issue it must be properly signed by a neutral and detached magistrate." *Id.* at 335.

However, in *People v Mitchell*, 428 Mich 364, 365-366; 408 NW2d 798 (1987), our Supreme Court revisited its decision in *Goff* and reconsidered the requirement that judicial signatures appear on search warrant affidavits. In *Mitchell*, the police officer had failed to sign the supporting affidavit. *Id.* at 366. However, the officer had met with the judge and attested to the truth of the information contained in the affidavit. *Id.* at 367. Furthermore, the judge had signed the search warrant itself. *Id.* The *Mitchell* Court concluded that "a search warrant should not necessarily be invalidated by the failure of the affiant to affix his signature to the affidavit." *Id.* at 368. The Court therefore created the following test to determine the validity of an affidavit in support of a search warrant:

A search warrant based on an unsigned affidavit will be presumed to be invalid, but this presumption of invalidity may be rebutted by a showing that the facts in the affidavit were presented under oath to the magistrate who authorized the issuance of a search warrant. [*Id.* at 365-366.]

Because the affidavit in that case had been made on oath before a magistrate, the Court concluded that the search warrant was valid and that the trial court erred in suppressing the evidence seized pursuant to that warrant. *Id.* at 369.

Finally, in *Barkley*, *supra* at 545, this Court extended the *Mitchell* rationale from the context of a supporting affidavit to the actual search warrant. In *Barkley*, the magistrate had signed the original search warrant and two of the copies, but had failed to sign the "serve" copy of the warrant. *Id.* at 541. The defendant in that case relied on this Court's decisions in *Hentkowski* and *Locklear* to argue that the lack of a signature on the search warrant rendered the search illegal. *Id.* at 541-542. This Court examined those decisions, together with the *Mitchell* decision, and concluded that "the *Mitchell* treatment of an unsigned affidavit is equally appropriate for an unsigned search warrant." *Id.* at 545.

Applying *Mitchell* to the issue presented here, we hold that the fact that a search warrant has not been signed by a magistrate or judge presents a presumption that the warrant is invalid. However, this presumption may be rebutted with evidence that, in fact, the magistrate or judge did make a determination that the search was warranted and did intend to issue the warrant before the search. [*Id.* (footnote omitted).]

We conclude that the *Barkley* decision governs the determination of the search warrant's validity in the instant case. Despite plaintiffs' argument to the contrary, this case does not involve a change in the law which occurred after a lower court rendered a final decision in the matter being litigated. Although the *Barkley* decision was issued after the district court dismissed the criminal charges against plaintiff Brown, *Barkley* was clearly binding on the circuit court when it rendered its decision in the instant case.

Even if we accepted plaintiffs' argument that the circuit court applied *Barkley* in a retroactive manner, the general rule in Michigan is that judicial decisions are to be given full retroactive effect. *Hyde v University of Michigan Board of Regents*, 426 Mich 223, 240; 393 NW2d 847 (1986). Prospective application of judicial decisions is generally limited to decisions which overrule clear and uncontradicted case law. *Id.* In *Barkley*, this Court did not overrule clear and uncontradicted case law. Although *Mitchell* may have effected such a change, that decision was issued long before the execution of the instant search warrant. In *Barkley*, this Court simply applied the *Mitchell* holding in a related context and concluded that *Hentkowski* had been wrongly decided in light of *Mitchell*.¹

Applying the *Barkley* holding to the present case, the instant search warrant is presumed invalid, due to the lack of a judicial signature on the original copy. However, given District Judge Costello's sworn testimony that she had found probable cause to support the search, and had authorized the issuance of the search warrant before the search occurred, that presumption has been rebutted. The search warrant was validly issued under Michigan law and the resulting search was legal.

We need not address plaintiffs' remaining arguments, as the validity of the search warrant and the subsequent search preclude plaintiffs from prevailing on their various tort claims.

Affirmed.

/s/ Henry William Saad
/s/ Richard A. Bandstra
/s/ Michael R. Smolenski

¹ Furthermore, the *Barkley* Court explicitly stated that "[t]he *Mitchell* analysis thus allows an 'after the fact' ratification of the presearch probable cause determination and decision to issue a warrant." *Barkley, supra* at 545 n 5.