

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF ARMADA,

Plaintiff-Appellant,

v

RAYMOND MARAH and SUSAN MARAH,

Defendants-Appellees.

UNPUBLISHED

September 26, 2006

No. 268142

Macomb Circuit Court

LC No. 2004-003132-CE

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

PER CURIAM.

Plaintiff appeals as of right from the circuit court’s opinion and order denying its motion for summary disposition and declaring one of its ordinances preempted by the Right to Farm Act (RFA), MCL 286.471 *et seq.* We reverse.

I. FACTS

Defendants own a parcel of slightly less than six acres in plaintiff township, in an area zoned R-1 (residential/agricultural). For several years, defendants have raised between approximately 12 and 20 llamas on their property.

Section 401 of plaintiff’s municipal ordinances sets forth the permitted uses for the zoning designation at issue. Section 401(B) covers “[g]eneral and specialized farming and agricultural activities, including the raising or growing of crops, livestock, poultry, bees and other farm animals, products and foodstuffs.” Section 401(E) lists “[t]he keeping of horses, cows, or similar animals for riding, show or personal use but not for the purpose of remuneration or sale,” but allows such activities “only on a lot or parcel of two acres or more. One additional acre is required for each animal after the first.” The latter subsection states that its regulations “do not apply to bona fide farms as defined in Article II.” “Farm” is defined in § 24 of plaintiff’s ordinances, in part, as “[a]ll of the associated land operated as a single unit on which bona fide farming is carried on; provided, however, that land to be considered a farm hereunder shall include a contiguous parcel of ten (10) acres or more in area.”

Plaintiff initiated a misdemeanor prosecution of defendant Raymond Marah, charging him with violating §§ 401(B) and (E). Trial took place in district court in July 2004. In that case, Raymond maintained that he was not conducting farming operations, in order to avoid the ten-acre requirement of §§ 24 and 401(B), and by arguing that llamas were not animals similar to

horses or cows, in order to avoid § 401(E)'s requirement of two acres for the first animal plus one for each in addition. Raymond was convicted of violating § 401(E), not (B). Thus, Raymond's assertion that he was not farming was vindicated in that case. The district court specifically found that the llamas "are not . . . kept for any commercial or farming purpose," but instead for "a hobby or they are pets." But Raymond was not successful with his assertion that llamas were sufficiently dissimilar to horses and cows to shield him from the acreage requirements for such animals raised for show or personal use. Raymond was sentenced to pay a fine, and to non-reporting probation for one year, conditions of which included removal of any llamas in excess of five.

This decision was affirmed on appeal to the circuit court. The latter declined to consider a newly raised argument that the RFA preempted plaintiff's zoning requirements for farms, because that defense was not raised or litigated below. This Court denied Raymond's application for leave to appeal the circuit court's decision "for lack of merit in the grounds presented." *People of Armada Twp v Marah*, unpublished order of the Court of Appeals, entered September 2, 2005 (Docket No. 262095).

In the meantime, in July 2004, plaintiff filed a verified complaint in the circuit court, asserting that defendants continued to raise between 18 and 20 llamas, and that this continued to run afoul of ordinances requiring that farms operate on parcels of no less than ten acres, or that such animals kept for show or personal use required two acres for the first and one acre for each in addition. Characterizing such practices as a nuisance per se, plaintiff sought injunctive relief. As the circuit court observed in affirming the misdemeanor conviction, this time defendants raised as an affirmative defense that they were conducting farming activities that implicated the RFA, and that the latter rendered null and void plaintiff's requirement that a farm operate on no fewer than ten acres.

The new case was assigned to a different circuit court judge, who denied a motion to transfer the case to the judge who had rejected the appeal in the misdemeanor action, and who decided to take evidence on the question whether defendants' keeping of their llamas constituted farming activity.

The trial court rejected plaintiff's contention that the RFA preemption defense was precluded in the instant matter, because it had not been adjudicated previously, and concluded that the RFA did indeed shield defendants, as farmers, from enforcement of the requirement that farms operate on parcels of ten or more acres. This appeal followed.

II. STANDARD OF REVIEW

"The applicability of a legal doctrine is a question of law," calling for review de novo. *James v Alberts*, 464 Mich 12, 14; 626 NW2d 158 (2001).

III. RES JUDICATA

Plaintiff argues that because Raymond Marah successfully asserted in the misdemeanor case that he was not engaged in farming activities, the doctrine of res judicata precludes defendants from labeling themselves farmers in this action for purposes of invoking the RFA. We agree.

Under the doctrine of res judicata, “a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.” *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998), quoting Black’s Law Dictionary (6th ed, 1990), p 1305. “The doctrine operates where the earlier and subsequent actions involve the same parties or their privies,¹ the matters of dispute could or should have been resolved in the earlier adjudication, and the earlier controversy was decided on its merits.” *Wayne Co, supra* at 277. Res judicata, then, bars claims predicated on disputes that were, or could have been, decided in earlier litigation.

The doctrine also operates to bar an affirmative defense in a new action that was closely related to, and logically followed from, an earlier one where that defense could have been raised. See *Detroit v Nortown Theatre, Inc*, 116 Mich App 386, 398-399; 323 NW2d 411 (1982) (treating a federal, and subsequent state cases as arising from a single cause of action for purposes of barring a defense in the latter that could have been, but was not, raised in the former).² Whether that doctrine bars a defense that could have been raised in an earlier case depends on whether the two actions involve the same facts and evidence. *Id.* at 393.³

In this case, defendants testified that they began their llama operation in the late 1990s, hoping to generate a retirement income. They detailed the selling of fleece, manure, and offspring of their llamas, and also selling wood, fruit, chickens, and eggs raised on the property. Defendants described a continuous operation, interrupted only by the misdemeanor proceedings, neither suggesting that there had been any material change in the nature of the operation from the onset.

It is irrelevant that the previous adjudication on the identical underlying issue was decided in a criminal context. In *Knoblauch v Kenyon*, 163 Mich App 712; 415 NW2d 286

¹ That defendant Susan Marah, as Raymond Murah’s wife, co-owner of property in question, and co-operator of the llama activities, stands in privity with Raymond in connection with the misdemeanor action seems obvious. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 13 (2003) (holding that “in order to find privity between a party and a nonparty, Michigan courts require both a substantial identity of interests and a working or functional relationship ... in which the interests of the non-party are presented and protected by the party in the litigation.” (internal quotations and citation omitted)). Accordingly, if Raymond is precluded from asserting the RFA defense in this case, so is Susan.

² We note that this case has in common with *Nortown Theatre* that “[t]he defendants again are trying to escape complying with the statute. This was the purpose of the [earlier] litigation: to determine if the ordinance was . . . binding on the defendants.” *Id.* at 398.

³ See also *Beatty v Brooking*, 9 Mich App 579, 588; 157 NW2d 793 (1968) (Baum, J., concurring) (observing that “[t]he principle of *res judicata* applies not only to claims which plaintiffs may make, but applies as well to matters of defense”) (italics in the original). Judge Baum in turn cited *Barris v Emmons*, 173 Mich 590; 139 NW 872 (1913), where our Supreme Court disallowed the defense of fraud to a decedent’s widow’s claim on the decedent’s estate where that defense had, or could have, been raised in earlier litigation. *Id.* at 591, 594-595.

(1987), the plaintiff had been previously convicted for first-degree criminal sexual conduct. *Id.* at 713. Following a bench trial, plaintiff moved for a new trial claiming ineffective assistance of counsel, which was granted and immediately vacated on a prosecutorial motion. *Id.* at 714. In a subsequent civil action, plaintiff filed a claim based on malpractice. *Id.* at 714. When plaintiff appealed, this Court held that “the issue presented [had] been decided . . . and the plaintiff . . . had a full and fair opportunity to litigate the question in his prior case.” *Id.* at 721. Therefore, the plaintiff was precluded in civil court from raising an issue that had been determined at his criminal trial.⁴ *Id.* at 725. *See also United States v Beaty*, 245 F.3d 617, 624 (CA 6, 2001) (holding that “[n]o rule of law precludes a prior criminal conviction from having preclusive effect in a subsequent civil proceeding between the government and the defendant.”).

We conclude the doctrine of res judicata precludes defendants from invoking the protection of the RFA in this case. Therefore, we need not consider the substance of the trial court’s conclusions concerning the extent to which plaintiff’s ordinances are preempted by it.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Alton T. Davis
/s/ William B. Murphy
/s/ Bill Schuette

⁴ *Knoblauch* specifically addresses the doctrine of “collateral estoppel,” which focuses on previously litigated issues, while “res judicata” addresses a subsequent suit brought between the same parties involving a different cause of action. *See Wilcox v Sealy*, 132 Mich App 38, 46; 346 NW2d 889 (1984). The doctrines are similar, and we believe that the analogy is appropriate. In *Knoblauch* we held that the doctrine of collateral estoppel barred plaintiff from re-litigating an issue in civil court that had been finally adjudicated at his criminal trial. We are of the opinion that the doctrine of res judicata is no less transferable between the criminal and civil arenas than that of collateral estoppel.