

STATE OF MICHIGAN  
COURT OF APPEALS

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TERRYL E. MASSE,

Plaintiff-Appellant,

v

DOUGLAS J. HARDING and VALERIE ANN  
HARDING,

Defendants-Appellees.

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UNPUBLISHED

April 24, 2007

No. 273798

Otsego Circuit Court

LC No. 01-009165-CH

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition for defendants on the ground that plaintiff's claim was barred by res judicata. We affirm. This appeal is decided without oral argument, pursuant to MCR 7.114(E).

A trial court's ruling granting summary disposition on the basis of res judicata is reviewed de novo. *Pierson Sand & Gravel, Inc v Keller Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

This case concerns an easement granted to allow access to land now owned by defendants. The easement was initially granted in 1951. In 1999, plaintiff sued defendants and others concerning that portion of the easement that crossed plaintiff's property. That suit resulted in a judgment in favor of defendants, and a determination by the trial court that defendants owned the dominant tenement and that the easement ran with the land "as a continuing easement appurtenant." That decision was not appealed.

In August 2000, plaintiff secured a life estate in that part of the easement that crosses the property owned by Lorayne F. Sinclair. Plaintiff sued defendants in May 2001, claiming that they were precluded from using the easement that crossed the Sinclair property. Initially, the trial court ruled that plaintiff lacked standing to sue. This Court reversed and remanded, holding that plaintiff's life estate gave him standing. *Masse v Harding*, unpublished per curiam opinion of the Court of Appeals, issued May 17, 2005 (Docket No. 252083).

Sinclair sued defendant in April 2004, claiming that the easement that crossed her property was invalid for the largely the same reasons as alleged by plaintiff in the instant case. The trial court held that the easement had existed for more than 50 years and its record was

unchallenged. In *Sinclair v Harding*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2006 (Docket No. 258978), this Court affirmed the trial court's decision.

After the decision in *Sinclair, supra*, was issued, defendants moved for summary disposition under to MCR 2.116(C)(7) in this case, arguing that the issue of the validity of the easement across the Sinclair property was decided in *Sinclair, supra*, and that that ruling barred this suit pursuant to the doctrine of res judicata. The trial court agreed, and granted summary disposition for defendants.

On appeal, plaintiff argues that his life estate in that portion of Sinclair's property burdened by the easement creates a different interest than that held by Sinclair, and that the res judicata doctrine does not operate to preclude this action because he is not in privity with Sinclair. We disagree.

The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action. The doctrine bars a second, subsequent action when: (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies and, (3) the matter in the second case was, or could have been, resolved in the first case. *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 671 NW2d 222 (2001). To be in privity is to be so identified with another party that the first litigant represents the same legal right that the latter litigant is attempting to assert. *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002). Perfect identity of interest is not required; a "substantial identity of interests" that are adequately presented and protected by the first litigant is sufficient. *Adair v State of Michigan*, 470 Mich 105, 122; 680 NW2d 386 (2004).

*Sinclair, supra*, established that the easement benefited defendants' property and burdened that owned by Sinclair. Plaintiff's only right to the Sinclair property comes from Sinclair's grant of a life estate to plaintiff. The rights asserted in *Sinclair, supra*, and this case are the same, *Sinclair, supra*, was decided on the merits, and plaintiff and Sinclair are in privity. The ruling in *Sinclair, supra*, precludes plaintiff from asserting the same claim in this action.

Plaintiff also asserts that the trial court abused its discretion by dismissing this suit because discovery had not been completed. We review a trial court's ruling on a discovery issue for an abuse of discretion. *Hanks v SLB Mgt, Inc*, 188 Mich App 656, 658; 471 NW2d 621 (1991).

Plaintiff submitted requests for admissions regarding 12 documents on file with the Otsego County Register of Deeds. Defendants replied that the deeds, easements, an affidavit, a certificate of survey, and other documents relating to the contested easement were what they were, and spoke for themselves. Defendants refused to give a legal opinion about the effect of the documents, and asserted that this Court's decision in *Sinclair, supra*, settled the issue of whether defendants had a legal right to an easement.

Documents recorded in the Register of Deeds office are hearsay as to defendants. The documents must speak for themselves, MRE 803(14), as defendants would be incompetent to testify regarding their accuracy or the truth of the matters asserted in them. MRE 801(c). Accordingly, we find no abuse of discretion in the trial court's ruling.

Affirmed.

/s/ Patrick M. Meter  
/s/ Kirsten Frank Kelly  
/s/ Karen M. Fort Hood