

Reversed and Remanded and Opinion filed February 22, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00119-CV

MICHAEL MABE, Appellant

V.

PATRICIA LLOYD, Appellee

**On Appeal from the 10th District Court
Galveston County, Texas
Trial Court Cause No. 97CV0596**

OPINION

This is an appeal from a summary judgment involving the res judicata effect of a forcible detainer action on a subsequent wrongful foreclosure suit. Appellant, Michael Mabe (Mabe), appeals the summary judgment granted by the trial court in favor of appellee, Patricia Lloyd (Lloyd). Because we find that Lloyd did not sustain her burden of proving every element of her affirmative defense of res judicata, we reverse.

I. Factual Background

Mabe and Lloyd entered into a contract for deed to purchase certain Galveston County real estate for \$65,000. The terms of the sale were that Mabe was to pay \$20,000 down in

cash, give Lloyd and her husband \$25,000 in “surrey cycles,” and Lloyd was to finance the remaining \$20,000, to be payable in monthly installments. Subsequently, Lloyd and her husband, Michael, divorced.

Soon after this divorce, a dispute ensued between Mabe, Lloyd and Lloyd’s husband regarding the quantity of the “surrey cycles” to be delivered, and which of the Lloyds were to receive them. Dissatisfied, Lloyd declared a cancellation of the contract and filed a forcible detainer suit in the Galveston County Justice Court. Mabe failed to file an answer and did not make an appearance at the hearing. The justice court entered a default judgment for Lloyd. Entitled to a trial de novo at the county court, Mabe appealed the default judgment. In the county court, Mabe filed an answer and a trial date was set. At trial, Mabe failed to appear, and the county court entered a judgment on the merits in favor of Lloyd.

Once this decision was final, Lloyd’s husband conveyed to James Mabe, Mabe’s father, his one-half interest in the property. James Mabe then brought a suit to partition the property in the county court. The court found that the property was not suitable for partition, and ordered its sale with James Mabe and Lloyd each to receive one-half of the proceeds.

Mabe then brought a suit in district court against Lloyd for wrongful foreclosure on the contract for deed. Lloyd asserted the affirmative defense of res judicata and moved for summary judgment. As evidence, she attached the two above-referenced judgments (from the forcible detainer action against Mabe, and the partition suit with James Mabe). The district court granted Lloyd’s motion on the basis of res judicata. Mabe then filed this appeal. As grounds for appeal, Mabe asserts that the forcible detainer suit does not have res judicata effect on a suit for wrongful foreclosure because the only issue to be tried in a forcible detainer action is that of immediate possession. Additionally, Mabe argues that the partition suit between Lloyd and James Mabe does not bar Mabe’s wrongful foreclosure suit because Mabe was not a party in that partition suit.

II. Res Judicata

Res judicata is an affirmative defense. *See* TEX. R. CIV.P. 94. When a defendant moves for summary judgment based on an affirmative defense, she must conclusively prove all essential elements of that defense as a matter of law. *See Rhone-Poulenc, Inc. v. Steel*, 997 S.W.2d 217, 223 (Tex. 1999). In reviewing the summary judgment proof, we indulge every reasonable inference in favor of the nonmovant. *See id.*

The doctrine of res judicata, or claim preclusion, addresses the conclusive effects of final judgments. *See Barr v. Resolution Trust Corp.*, 837 S.W.2d 627, 628 (Tex. 1992). Res judicata prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of due diligence, should have been litigated in the prior suit and prevents the splitting of a cause of action. *See id.* at 628-29. The policies behind the doctrine reflect the need to bring all litigation to an end, prevent vexatious litigation, maintain the stability of court decisions, promote judicial economy, and prevent double recovery. *See id.* at 629.

In order for a claim to be barred by res judicata, the party claiming preclusion must prove: (1) a prior final judgment on the merits was entered by a court of competent jurisdiction; (2) the identity of the parties or those in privity with them are the same; and (3) the second action is based on the same claims as were raised or could have been raised in the first action. *See Amstadt v. United States Brass Corp.*, 919 S.W.2d 644, 652 (Tex. 1996).

In essence, Lloyd submits two judgments to support her motion for summary judgment. The first judgment is the one from the forcible entry and detainer action that she brought against Mabe, and its subsequent appeal to the county court. The second judgment is from an action brought by Mabe's father to partition the property. We begin with the forcible detainer suit against Mabe.

Our analysis of the forcible detainer judgment starts with the first element of the res judicata defense; that a prior final judgment on the merits was entered by a court of competent jurisdiction. Implicit in this proposition is that Lloyd must prove that the court that rendered

the judgment, which she claims bars the relitigation of Mabe's cause of action in this suit, had competent jurisdiction. *See Amstadt*, 919 S.W.2d at 652. Without jurisdiction, the judgment rendered in the first lawsuit cannot bar litigation of Mabe's cause of action.

In a forcible entry and detainer suit, the only issue to be decided is the right to the immediate possession of the real property; the merits of the title may not be adjudicated. TEX. R. CIV. P. 746. A forcible entry and detainer suit must be brought in the justice court in the precinct in which the real property is located, and must be appealed to a county court in the county in which the judgment is rendered. When the judgment of a justice court is appealed, the appellate jurisdiction of the county court is absolutely dependent upon the jurisdiction of the justice court. *See Childress Oil Co. v. Wood*, 111 Tex. 165, 166, 230 S.W. 143 (1921). Therefore, the jurisdiction of the county court is limited to the jurisdictional limits of the justice court. *See Color Tile, Inc. v. Ramsey*, 905 S.W.2d 620, 622 (Tex. App.—Houston [14th Dist.] 1995, no writ).

In this suit, Mabe's claim is based on lost profits from being dispossessed from the property, and on the merits of the title to the property in accordance with the contract for deed entered into between Mabe and Mr. and Mrs. Lloyd. Mabe asserts that as a result of Lloyd's failure to comply with the contract, and wrongful foreclosure on the property, Mabe has been damaged to the extent of the money that he has paid to Lloyd based on the contract, and for lost profits. The Texas Rules of Civil Procedure are very clear that the merits of title shall not be adjudicated in a forcible entry action. TEX. R. CIV. P. 746. Likewise, the Texas Property Code is clear in holding that profits and damages will not be adjudicated in the forcible detainer action. TEX. PROP. CODE ANN. § 24.008 (Vernon 2000). Because possession is the only issue that can be litigated in a forcible detainer suit in justice court, Mabe's wrongful foreclosure claim could not have been brought in the forcible detainer action in the justice court or its appeal to the county court. Therefore, the judgment in that prior suit does not provide a res judicata bar to the assertion of Mabe's claims in the current district court action.

The second case submitted by Lloyd as evidence of the affirmative defense of res judicata is a suit brought in the district court by Mabe's father against Lloyd to partition the property. Although the district court clearly had jurisdiction to hear any of Mabe's claims which are the subject of this action, Lloyd did not establish the second element of a res judicata defense: that the identity of the parties or those in privity with them are the same.

This second case was a suit filed by Mabe's father, James Mabe, to partition the property. This suit was based on James Mabe's purchase of an interest in the property from Lloyd's former husband after Lloyd's forcible detainer action against Michael Mabe. In Lloyd's summary judgment proof, we do not find anything that would suggest that Michael Mabe and James Mabe were in privity. We also note that although these two individuals may be closely related by affinity, this relationship is not sufficient to justify a finding of privity. *Cf. Cooper v. Texas Gulf Industries, Inc.*, 513 S.W.2d 200 (Tex. 1974) (holding that husband and wife were not in privity with each other for purposes of res judicata). Therefore, because Mabe was not a party to the judgment, this partition action does not provide a res judicata bar to the assertion of Mabe's claims in the current district court action. Accordingly, we sustain Mabe's challenge to the summary judgment below.

III. Conclusion

Because we find that Lloyd did not sustain her burden of proving every element of her affirmative defense of res judicata, we reverse the summary judgment granted in favor of appellee and remand the cause to the trial court for further proceedings consistent with this opinion.

/s/ John S. Anderson
Justice

Judgment rendered and Opinion filed February 22, 2001.

Panel consists of Justices Anderson, Frost and Amidei¹.

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¹ Former Justice Maurice Amidei sitting by assignment.

