STATE OF MINNESOTA
IN COURT OF APPEALS
A10-5

Gretchen Kellogg,
Appellant,

vs.

Daniel A. Kellogg,
Respondent,
Emily R. Kellogg,
Respondent.

Filed August 10, 2010
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-09-21446

Robert J. Hajek, Donald L. Beauclaire, Hajek & Beauclaire LLC, Minnetonka, Minnesota (for appellant)

David M. Jacobs, Minneapolis, Minnesota (for respondent Daniel A. Kellogg)

Mark W. Kelly, Excelsior, Minnesota (for respondent Emily R. Kellogg)

Considered and decided by Wright, Presiding Judge; Kalitowski, Judge; and Ross, Judge.

U N P U B L I S H E D O P I N I O N

ROSS, Judge

This case concerns a dispute between a woman and her former daughter-in-law over ownership of a $2,000,000 vacation property in the Bahamas. When the daughter-in-law divorced the woman's son in 2009, the district court decided that the woman's $58,000 contribution toward the property's purchase had been a mere loan rather than an investment, leaving the daughter-in-law and son each with a one-half interest in the property and each liable to repay half the $58,000 loan to the mother-in-law. The mother-in-law then sued her son and daughter-in-law in district court, arguing that the loan was really an investment entitling her to a 25% interest in the property. The district court granted summary judgment against the mother-in-law because, among other reasons, the dissolution court had already decided ownership and collateral estoppel barred relitigation of the issue. We agree with that conclusion, and we affirm.

FACTS

Daniel Kellogg and Emily Lyon (now Emily Kellogg) purchased a vacation property in the Bahamas in 2000, married in 2006, and divorced in 2009. They purchased the property with the help of Gretchen Kellogg, Daniel Kellogg's mother. Gretchen initiated this action after the dissolution, claiming that she has an ownership interest in the vacation property.

The parties differ about the nature of Gretchen Kellogg's contribution, but the key facts are undisputed. Emily Kellogg provided approximately $257,000 to buy the property, and Daniel Kellogg asked his mother for the remaining $58,000 to complete the

purchase. Gretchen Kellogg agreed, but her funds were in an IRA. Emily sought and personally guaranteed a short-term loan to Gretchen from Emily's former husband, Christopher Lyon. After Gretchen liquidated a portion of her IRA and repaid Lyon, Emily and Lyon signed as "witnesses" a confusing untitled document addressed "To whom it may concern." The document acknowledged Gretchen's repayment and described the transaction as a loan, but it also suggested that Gretchen understood that she was applying the loan proceeds to secure a "one fourth" ownership interest in the property:

> This check from Gretchen Kellogg in the amount of $58,000.00 is a full and complete payment for a short-term loan from Christopher Lyon. This loan was acquired to purchase a lot on Harbour Island, Bahamas by Gretchen Kellogg. This lot being one fourth of the Bettenbuhl Estate, land only, located in the area known as The Narrows. This letter shall be proof, along with a receipt from Christopher Lyon of payment in full of above loan.

After the purchase, the Kelloggs, including Gretchen Kellogg, used the property for their own vacationing. Daniel and Emily also periodically rented it to others.

Emily Kellogg sought dissolution in 2008, with the parties' interests in the vacation property becoming the central issue in the dissolution trial. By then it had been appraised at $2,000,000. Daniel Kellogg argued and presented evidence that his mother Gretchen Kellogg owned a quarter interest in the land. Gretchen testified, claiming that her $58,000 contribution was an investment to acquire that interest. She maintained that the document acknowledging the loan repayment to Lyon supported her ownership claims, but she admitted that her name appeared on none of the ownership documents.

The property's deed assigns title to Daniel and Emily, and the purchase agreement does not mention Gretchen. She received none of the rent proceeds, paid none of the property taxes, and contributed to none of the regular maintenance.

After the dissolution trial, the district court found that Daniel and Emily Kellogg jointly purchased the property and that each owns an undivided one-half interest. It also found that Gretchen Kellogg's $58,000 contribution was a loan to the couple, not a payment toward ownership. It specifically considered and rejected Daniel's argument and Gretchen's testimony that the parties intended to divide the land and convey one-quarter to Gretchen. It observed that there was no supporting "written documentation of agreement signed by all interested parties, deed purchase agreement, or subdivision documents . . . produced at trial." The court ordered Emily and Daniel to sell the property and repay Gretchen with interest. No one appealed the dissolution judgment.

Gretchen Kellogg initiated this separate action against Daniel and Emily seeking either a 25% share of the sale proceeds or partition of the property. Daniel is adverse to Gretchen in caption only; he took the same position supporting his mother's claim to ownership that he took in the dissolution proceeding. Emily moved for summary judgment. The district court granted the motion on various grounds. It concluded primarily that Gretchen is collaterally estopped from relitigating ownership, an issue decided by the district court in the dissolution trial. The district court also granted Emily leave to bring a separate motion for sanctions against Gretchen. This appeal follows.

D E C I S I O N

On appeal from summary judgment, this court must decide whether any issues of material fact exist and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review the evidence in the light most favorable to the party against whom judgment was granted. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). No questions of fact exist when collateral estoppel conclusively precludes relitigation of an issue. *State Farm Mut. Auto. Ins. Co. v. Spartz*, 588 N.W.2d 173, 175 (Minn. App. 1999), *review denied* (Minn. Mar. 30, 1999).

The district court applied collateral estoppel to bar Gretchen Kellogg's ownership claims. It reasoned that she "seeks nothing more than to relitigate the exact same ownership issues that were raised before the Family Court and specifically rejected by that Court." Whether collateral estoppel bars a claim is a mixed question of law and fact that we review de novo. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). If the circumstances permit it to be applied, whether to apply collateral estoppel rests in the district court's discretion and will not be reversed absent an abuse of that discretion. *Pope County Bd. of Comm'rs v. Pryzmus*, 682 N.W.2d 666, 669 (Minn. App. 2004), *review denied* (Minn. Sept. 29, 2004).

Collateral estoppel prevents an issue that has been determined by a court of competent jurisdiction from being relitigated in a later suit involving either a party to the

prior litigation or the party's privy. *Kaiser v. N. States Power Co.*, 353 N.W.2d 899, 902 (Minn. 1984). It applies only if

> (1) the issue [is] identical to one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or was in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Hauschildt, 686 N.W.2d at 837. And the issue "must have been necessary and essential to the resulting judgment" in the prior action. *Id.* Because collateral estoppel is an equitable doctrine, courts may apply it only when doing so will not result in an injustice to the estopped party. *Barth v. Stenwick*, 761 N.W.2d 502, 508 (Minn. App. 2009).

Gretchen Kellogg argues that she was neither a party nor in privity with Daniel in the dissolution action, that she did not have a full and fair opportunity to be heard, and that barring her argument is unfair. The arguments are not convincing.

Privity

Although Gretchen Kellogg was not a party in the dissolution, the district court correctly determined that she was in privity with Daniel Kellogg. "Privity" evades a precise definition, but it "expresses the idea that as to certain matters and circumstances, people who are not parties to an action but who have interests affected by the judgment as to certain issues in the action are treated as if they were parties." *SMA Servs., Inc. v. Weaver*, 632 N.W.2d 770, 774 (Minn. App. 2001); *see also State v. Joseph*, 636 N.W.2d 322, 327 n.2 (Minn. 2001) ("In general, privity involves a person so identified in interest with another that he represents the same legal right."). Because there is no prevailing definition or precise test of privity, courts should carefully examine the circumstances to

determine whether privity exists in each case. *Margo-Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 294 Minn. 274, 278, 200 N.W.2d 45, 47 (1972). Determining privity depends "on whether the party to be estopped (1) had a controlling participation in the first action, (2) had an active self-interest in the previous litigation, or (3) had a right to appeal from a prior judgment." *State v. Lemmer*, 736 N.W.2d 650, 661 (Minn. 2007) (citation omitted).

The district court based its privity determination on Gretchen Kellogg's active self-interest and active participation in the previous litigation. It found that "[Gretchen] and Daniel Kellogg's interests were completely aligned during the Family Court proceedings" based on the following circumstances: Daniel had specifically argued that the parties had agreed to convey a quarter of the vacation property to Gretchen; he called Gretchen as a witness and she testified about her ownership claims; and he presented evidence purporting to show Gretchen's rights to the property and her agreement with Emily and Daniel. The district court also observed that Daniel's separate answer to Gretchen's complaint in this action demonstrated their common interests by admitting to all of her claims.

Commonality of interests cannot alone establish privity. *Id.* at 660. "Rather, when determining whether privity exists, the proper focus is on whether the legal rights of the party to be estopped were adequately represented by the party to the first litigation." *Id.* at 661. Not only did Daniel Kellogg demonstrate his and his mother's common interest in having her own one quarter of the property, he also acted to represent his mother's interests and did so adequately. Although Daniel theoretically would have been entitled to a greater share of the sale proceeds if Gretchen's $58,000 contribution

was determined to be a loan rather than a quarter-share purchase, he presented the same primary evidence of her ownership interest that she eventually presented to the district court in this case. He called her to testify about the arrangement and her understanding that her contribution was an investment. It was also in Daniel's interest to argue that Gretchen owned one-quarter of the property because he stood to inherit her interest, eventually leaving him with more under the investment theory than under the loan theory. Daniel and Gretchen's deposition testimony and Gretchen's will demonstrate that they agreed that her interest would pass to Daniel.

We also observe that additional, nonfinancial considerations tend to indicate Daniel and Gretchen's mutual interest. It is not surprising in a dissolution proceeding dubbed "contentious" by the district court that a son would fight for his mother's investment theory to contradict his wife's loan theory, particularly when his mother's theory would leave his wife with a smaller share than the one his wife sought.

The key circumstances surrounding the ownership issue point in a single direction; they support the determination that Gretchen Kellogg was in privity with Daniel Kellogg. Gretchen had an active self-interest in the proceeding, she participated in the proceeding, and Daniel adequately represented her interests.

Opportunity to Be Heard

We also agree with the district court's assessment that "[a]lthough [Gretchen Kellogg] failed to intervene in the Family Court proceedings to protect her claimed interest in the Property, the Court nonetheless gave her a full and fair opportunity to present testimony and evidence regarding her claims." The issue of whether a party

received a full and fair opportunity to be heard in a prior action generally focuses on "whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." *Joseph*, 636 N.W.2d at 328.

Gretchen contends that Daniel's presentation of her testimony in the dissolution trial was hindered by continual objections. Those objections by Emily's counsel primarily challenged relevancy and foundation. The dissolution court's preventing Daniel from asking improper questions did not deny Gretchen a fair opportunity to be heard. The court allowed the questions that were relevant to determining whether and to what extent Gretchen owned part of the property.

Gretchen also argues that she did not have a fair opportunity to be heard because she could not present her own legal arguments, such as that the statute of frauds was satisfied and that she is entitled to a constructive trust. She asserts also that, as a nonparty, she had no right to pose objections, cross-examine witnesses, or affirmatively present her case. But we have stated that nonparties may have the right to intervene in divorce proceedings, and Gretchen did not attempt to do so. *See Fraser v. Fraser*, 642 N.W.2d 34, 38 (Minn. App. 2002) ("[T]hird-party practice is not categorically prohibited in dissolution proceedings."); *see also* Minn. R. Civ. P. 24.01 (providing that anyone claiming an interest in property that is the subject of the action has the right to intervene). And we have held that the mother of a party to a dissolution action has standing to appeal from an order in that action that adversely affected her rights even if she had failed to

intervene in the action. *In re Marriage of Sammons*, 642 N.W.2d 450, 455–57 (Minn. App. 2002).

Gretchen challenges the district court's statement that she presented "the exact same evidence" to the family court that she submitted in this action. She is correct that there was added evidence in this case, including affidavits from Gretchen's friends and a draft of her will, but to the limited extent the additional evidence advances her argument that she had a property interest, it falls far short of justifying a different result. And if a person in privity could escape being collaterally estopped by presenting more evidence in the collateral proceeding than her representative presented in the prior litigation, the doctrine would easily be rendered meaningless by tactical evidentiary offerings.

Gretchen Kellogg had notice of the dissolution and knew that her property interest was at stake. She did not attempt to intervene but relied on her own testimony and the argument and evidence offered by her son to establish the same ownership interest that she sought to establish before the district court in this case. She had the opportunity to be heard on the issue, and she was heard.

Fairness

We similarly find unpersuasive Gretchen Kellogg's contention that application of collateral estoppel was "patently unfair." It is true that the district court's decision leaves intact the prior designation of ownership interests and that the designation prevents Gretchen from realizing a claimed share of the apparent extraordinary profit that might be realized on the disputed vacation property. But neither the underlying challenged decision nor the collateral estoppel decision produces an inequity. Gretchen is not left

empty-handed. She contributed $58,000 to the purchase of the property, and the dissolution decree requires Daniel and Emily to repay the loan with interest, resulting in nearly a $90,000 award. A $32,000 gain on a 10-year, $58,000 real estate loan is not the sort of injustice that signals an abuse of discretion.

Sanctions

Gretchen Kellogg also challenges the district court's order granting Emily Kellogg leave to bring a separate motion for sanctions under Minn. Stat. § 549.211, subd. 4 and Minn. R. Civ. P. 11.03(a). But she cannot prevail unless the decision prejudiced her. *See* Minn. R. Civ. P. 61 (requiring district court to disregard any error that does not affect the parties' substantial rights). And she can show no prejudice; although the district court granted Emily leave *to bring a motion* for sanctions against Gretchen and Daniel, it neither ordered sanctions nor addressed whether they would be appropriate.

Because we affirm the district court's application of collateral estoppel and application of the doctrine forecloses Gretchen Kellogg's claim to ownership in the real estate itself or in any theoretical partnership owning the real estate, we do not reach the merits of the underlying ownership theories or review the district court's remaining legal conclusions.

Affirmed.