

IN THE COURT OF APPEALS 06/04/96

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-01090 COA

HENRINE MATTHEWS

APPELLANT

v.

SOUTH DELTA REGIONAL HOUSING AUTHORITY, MISSISSIPPI-YAZOO DELTA HOUSING CORPORATION AND DENNIS SMITH, IN HIS OFFICIAL CAPACITY AS THE EXECUTIVE DIRECTOR OF THE SOUTH DELTA HOUSING AUTHORITY AND MISSISSIPPI-YAZOO DELTA HOUSING CORPORATION

APPELLEES

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND
MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. EUGENE M. BOGEN

COURT FROM WHICH APPEALED: WASHINGTON COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT:

STANFORD KNOTT

ATTORNEY FOR APPELLEES:

JENNY M. VIRDEN

NATURE OF THE CASE: LANDLORD TENANT: WRONGFUL EVICTION

TRIAL COURT DISPOSITION: CLAIM BARRED BY RES JUDICATA

BEFORE FRAISER, C.J., McMILLIN, AND PAYNE, JJ.

FRAISER, C.J., FOR THE COURT:

Henrine Matthews (Matthews) commenced this action against South Delta Regional Housing Authority, Mississippi-Yazoo Delta Housing Corporation, and Dennis Smith, in His Official Capacity as the Executive Director of the South Delta Housing Authority and Mississippi-Yazoo Delta Housing Corporation (collectively the Authority) for wrongful ejection, breach of the covenant of quiet enjoyment, and conversion. The trial court granted the Authority summary judgment because Matthews was collaterally barred from asserting her claims. We affirm.

FACTS

On June 24, 1992, the Authority filed suit against Matthews in the Justice Court of Bolivar County for delinquent rent and removal from a rental unit located in Cleveland, Mississippi. The case was set to be heard on July 20, 1992. Prior to the hearing date the Bolivar County Constable served Matthews with process notifying her of the date of the hearing; however, she did not appear at the hearing and, accordingly, a default judgment was rendered in favor of the Authority.

On August 11, 1992, the justice court clerk issued a warrant of removal commanding the constable to remove Matthews from the leasehold. Two days later, the constable went to the rental premises and, finding Matthews gone, locked the door. Several hours later, the tenant tendered a payment to the justice court clerk in partial satisfaction of her delinquent rent and was allowed to reenter the rental unit where she continued to reside at least through the time of the filing of this appeal.

In October 1992, counsel for Matthews requested and received an ex parte conference.

After the conference, the justice court judge entered an order, prepared by Matthews counsel, revoking the default judgment of July 20, 1992. Thereafter, Matthews filed this action against the authority for wrongful eviction, breach of the covenant of quiet enjoyment, and conversion of the money that Matthews paid to regain entry to the leasehold.

When the Authority learned of the revocation, it moved the justice court to reinstate the default judgment. A hearing on this motion was held on July 27, 1993, and counsel for all parties attended, together with their witnesses. At the conclusion of that hearing, the justice court judge concluded that Matthews was in wrongful possession of the leasehold when she failed to pay rent within thirty days of the date it was due and reinstated the judgment.

Matthews' counsel filed an appeal from the justice court to the county court. However, on June 21, 1994, she voluntarily dismissed the appeal with prejudice.

Following the dismissal of her appeal, the Housing Authority moved for summary judgment in this action. The trial court granted summary judgment holding that an essential element of a claim for wrongful eviction, conversion of a leasehold and breach of the covenant of quiet enjoyment is that the complaining tenant was lawfully occupying the premises pursuant to a valid lease. Further, the trial court found that the justice court correctly held that Matthews was unlawfully occupying the rental premises at the time in question and that the doctrine of res judicata conclusively established that Matthews could not maintain an action against the Authority because she was previously adjudicated as being in wrongful possession of the leasehold.

On September 15, 1994, summary judgment was entered in favor of the Authority; subsequently, Matthews' motion to reconsider the judgment was denied. Matthews timely perfected her appeal alleging the following errors:

I. Whether the trial court erred in finding no genuine issue of material fact existed to preclude summary judgment?

II. Whether the doctrine of res judicata is applicable to this case?

III. Whether the Bolivar County Circuit Court erred in granting a change of venue to the Washington County Circuit Court?

DISCUSSION

The first two issues are intertwined; consequently, we address them together. We review de novo the granting of summary judgment by the trial court. In doing so, we recognize that a motion for summary judgment should be granted only where there is no genuine issue of material fact. All evidence presented must be viewed in the light most favorable to Matthews, the opponent to the motion. *Brown v. Credit Ctr., Inc.*, 444 So. 2d 358, 362 (Miss. 1983).

What facts are material depends on the legal requirements of a claim for wrongful eviction, breach of the covenant of quiet enjoyment, and conversion. In order to file a wrongful eviction action, the tenant must be in lawful possession of the leasehold. *Clark v. Service Auto Co.*, 108 So. 704, 706-07 (Miss. 1926); *Moring v. Ables*, 62 Miss. 263, 270-71 (1884); *see also Bender v. North Meridian Mobile Home Park*, 636 So. 2d 385, 388-89 (Miss. 1994) (citing *Clark* favorably and impliedly holding that a tenant must be in lawful possession to maintain an action for wrongful eviction). Because Matthews was adjudged to be in wrongful, not lawful, possession of the leasehold by the justice court, the trial court ruled that Matthews was barred from relitigating the issue of whether she was in lawful possession. Thus, there are no material facts in issue pertaining to the wrongful eviction claim provided collateral estoppel is appropriate.

In order to maintain an action for breach of the covenant of quiet enjoyment, the plaintiff must hold the leasehold pursuant to a valid lease at the time quiet enjoyment was interrupted. *See Meyn v. City of Gulfport*, 570 So. 2d 1198, 1200 (Miss. 1990). The justice court ruled that Matthews had breached her contract with the Authority and that she no longer had a valid lease due to her nonpayment of rent two days before it issued the writ of ejectment. Because the justice court ruled that Matthews did not hold the leasehold pursuant to a valid contract, she could not prove the most basic element of a breach of the covenant of quiet enjoyment -- that she held pursuant to a valid lease at the time her quiet enjoyment was disturbed. Thus, there are no material facts in issue pertaining to the breach of the covenant of quiet enjoyment claim provided collateral estoppel is appropriate.

To maintain an action for conversion of her rent money, Matthews must prove that the Authority

wrongfully possessed, or exercised unauthorized dominion of the rent money, which Matthews paid the justice court clerk to regain admission to the leasehold. *Mississippi Motor Finance v. Thomas*, 149 So. 2d 20, 23 (Miss. 1963). The justice court determined that Matthews owed the rent money. The Authority could not wrongfully possess the money paid to the justice court clerk because the justice court determined that the money was owed to the Authority. Thus, there are no material facts in issue pertaining to the conversion claim provided collateral estoppel is appropriate.

While the trial court refers to the doctrine of res judicata, we refer more specifically to the doctrine of collateral estoppel. Res judicata prevents the parties from relitigating the same claim. "The bar of collateral estoppel is related to res judicata, but is slightly different in nature." *Aetna Casualty & Sur. Co. v. Berry*, 669 So. 2d 56, 67 (Miss. 1996). "When collateral estoppel is applicable, the parties will be precluded from relitigating a specific issue actually litigated, determined by, and essential to the judgment in a former action, even though a different cause of action is the subject of the subsequent action." *Id.* See also *McIntosh v. Johnson*, 649 So.2d 190, 192-94 (Miss.1995) (clarifying distinction between doctrines of res judicata and collateral estoppel). In this case, the claims of wrongful eviction, breach of the covenant of quiet enjoyment, and conversion of the rent money were not previously asserted and decided only the issue of whether Matthews held wrongfully or lawfully due to her failure to pay rent. Thus, we employ collateral estoppel not res judicata in resolving this case.

Collateral estoppel is applicable to preclude parties from relitigating a specific issue if:

- (1) there is an identity of the parties;
- (2) the issue was actually litigated;
- (3) the issue was determined in the former action; and
- (4) the issue was essential to the judgment in the former action.

Hollis v. Hollis, 650 So. 2d 1371, 1377, 1377-78 (Miss. 1995).

In the case at bar, all four elements are present. First, the parties to both actions are the same. Second, the issue was actually litigated. Of course, the issue was not litigated in the initial default judgment or ex parte conference to set aside the default judgment. The issue was litigated at the hearing to reinstate the original judgment. At that hearing, counsel for all parties were present for both sides, and testimony was presented and arguments heard. Third, the question of whether Matthews was in lawful or wrongful possession pursuant to a valid lease was determined as was the question of whether Matthews owed the Authority for rent. The court found that Matthews was in wrongful possession because she had failed to pay her rent and returned a judgment for rent past due and issued a warrant of removal. Fourth, determining whether Matthews was in lawful or wrongful possession was essential to the prior judgment. Without determining that Matthews was in wrongful possession, the justice court could not have found that Matthews was in default or issued the warrant of removal. Matthews had full and ample opportunity to present her case to the justice court and did so. The justice court made a final decision on the merits, which after the rehearing, Matthews had notice and opportunity to appeal. Therefore, collateral estoppel is appropriate in this case to prohibit Matthews from relitigating the justice court's finding that she was in wrongful possession due to her failure to pay rent at the time she was locked out of her house. Because collateral estoppel applies,

there are no material facts in dispute, and the Authority is entitled to summary judgment as a matter of law.

Matthews argues that res judicata/collateral estoppel should not apply in this case. She claims that she was unable to present her case to the justice court because she relied on the alleged representations of the project manager that the matter had been resolved. In support of her position Matthews cites *Gardner v. Price*, 25 So. 2d 459, 461 (Miss. 1946), for the proposition that a default judgment is not res judicata where one party was deprived of an opportunity to present its case because of an innocent misrepresentation by the trial judge as to the date of the hearing on the merits. This is not the case before us. As mentioned above, Matthews did have an opportunity and did make her case: first, ex parte to the justice court judge and second, in an adversarial evidentiary hearing. The case before us does not suffer from the defect that the *Gardner* case did.

Finally, Matthews' argument that the trial court erred in transferring venue is at best harmless error. Whether the court erred or not is irrelevant, considering that Matthews' claim for wrongful eviction is collaterally barred. Where a trial court's decision would remain the same regardless of whether or not the motion was granted, any error in granting the motion is at best harmless. *Cox v. Howard, Weil, Labouisse, Friedrichs, Inc.*, 619 So. 2d 908, 912 (Miss. 1993).

For the foregoing reasons, the judgment of the Washington County Circuit Court is affirmed.

**THE WASHINGTON COUNTY CIRCUIT COURT JUDGMENT IS AFFIRMED.
APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.**

**BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ, KING, McMILLIN,
PAYNE, AND SOUTHWICK, JJ., CONCUR.**