IN THE SUPREME COURT OF FLORIDA

L. H. YOUNGBLOOD,

Appellant,

vs.

FRANK HERBERT TAYLOR,

Appellee.

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Appeal from Circuit Court

of Polk County, Florida

Hon. Don Register, Circuit Judge

BRIEF OF APPELLANT

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ALPHABETICAL LIST OF AUTHORITIES CITED

NO.

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APPEAL FROM THE CIRCUIT COURT FOR POLK COUNTY, FLORIDA.

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STATEMENT OF THE CASE

This appeal is from a summary final judgment entered in favor of the defendant below (appellee here). Appellant was the plaintiff below, and in this brief, the parties will be referred to as they stood in the trial court. The "Record on Appeal" will be hereinafter referred to as "R".

L. H. Youngblood filed his Complaint (R1) on November 10, 1954, in the Circuit Court for Polk County, Florida, charging that the defendant, Frank Herbert Taylor, ".... was... operating (his) vehicle in such a careless, negligent and reckless manner that he

caused said vehicle to collide with and strike the bicycle ridden by plaintiff's minor son, Marvin Youngblood" and as the proximate result thereof, "plaintiff has been compelled to expend and will be compelled to expend in the future, large sums for hospitalization, medication, medical and surgical fees, and has been deprived of the services and earnings of his minor son (R2)". Defendant, Frank Herbert Taylor, filed his Answer on December 4, 1954, and denied any negligence on his part and further alleged that Marvin Youngblood was contributorily negligent (R3).

Thereafter, on January 13, 1955, defendant moved to amend his defenses by the addition of the defense that the basic issues involved in the instant case had been already litigated in the case of Marvin Youngblood, a minor, by his father and next friend, L. H. Youngblood, plaintiff vs. Frank Herbert Taylor, defendant, and that a verdict in favor of the defendant had been rendered therein, and final judgment entered thereupon (R3-4); (see Appendix) On January 19, 1955, plaintiff moved to strike such additional defense, in the event that defendant's Motion to Amend was granted, as insufficient and immaterial (R4). Defendant's Motion to Amend his defenses was granted by the court below on March 15, 1955 (R5), and on that same date, plaintiff's Motion to Strike such additional defense was denied (R5). The parties, on March 15, 1955, filed a Stipulation that the instant cause involved "....the same basic issues of

negligence and contributory negligence as were alleged in the complaint in Marvin Youngblood, a minor, by his father and next friend, L. H. Youngblood, plaintiff vs. Frank Herbert Taylor, defendant, and that the case of Marvin Youngblood, a minor, by his father and next friend, L. H. Youngblood was tried by a jury, a verdict for the defendant was returned and a final judgment for defendant was entered on December 24, 1954" (R6), and upon Motion for Judgment on the Pleadings filed by defendant on March 15, 1955 (R6), the court below entered Summary Final Judgment in favor of the defendant (R7; see Appendix). Notice of Appeal (R8-9) and Assignments of Error (R9-10) were filed by plaintiff on May 10, 1955.

STATEMENT OF THE FACTS

Since only questions of law are involved in this appeal, the Statement of the Case as hereinbefore set forth fully presents all matters to be discussed hereinafter.

STATEMENT OF QUESTIONS INVOLVED

I. Is it error to enter summary final judgment in an action by a parent to recover consequential damages resulting to himself from a negligent injury to his minor child where an appeal is pending from an adverse judgment against the child rendered in a prior action brought by the child?

Trial Court answered in the negative.

Plaintiff's Assignment of Error No. 4 (R9-10).

II. Is a parent, suing for consequential damages resulting to himself from a negligent injury to his minor child bound by a judgment rendered in a prior action brought by the child?

Trial Court answered in the affirmative.

Plaintiff's Assignments of Error Nos. 1, 2 and 3 (R9).

ARGUMENT

I

IS IT ERROR TO ENTER SUMMARY FINAL JUDGMENT IN AN ACTION BY A PARENT TO RECOVER CONSEQUENTIAL DAMAGES RESULTING TO HIMSELF FROM A NEGLIGENT INJURY TO HIS MINOR CHILD WHERE AN APPEAL IS PENDING FROM AN ADVERSE JUDGMENT AGAINST THE CHILD RENDERED IN A PRIOR ACTION BROUGHT BY THE CHILD?

On December 24, 1954, final judgment was entered in favor of the defendant here in the case of Marvin Youngblood, a minor, by his father and next friend, L. H. Youngblood vs. Frank Herbert Taylor (R6). Plaintiff, in that case, duly filed his Notice of Appeal and that case is now awaiting determination by this Court. In the event this Court reverses the judgment of the trial court in the Marvin Youngblood case, the summary final judgment entered herein by the trial court must be reversed. It is plaintiff's contention that, at most, all proceedings in the instant case should have been stayed pending a final determination by this Court in the Marvin Youngblood case. It was error for the trial court to have entered summary final judgment prior to the final determination by this Court as aforesaid.

II

IS A PARENT SUING FOR CONSEQUENTIAL DAMAGES RESULTING TO HIMSELF FROM A NEGLIGENT INJURY TO HIS MINOR CHILD BOUND BY A JUDGMENT RENDERED IN A PRIOR ACTION BROUGHT BY THE CHILD?

Prior to the final summary judgment (R7) rendered in the instant case, a verdict and final judgment had been entered in favor of the defendant here, Frank Herbert Taylor, in the case of Marvin Youngblood, by his father and next friend, L. H. Youngblood, plaintiff, vs. Frank Herbert Taylor, defendant (R6). On the basis of the final judgment in that case, the trial court entered summary final judgment herein (R7). This was error.

The foundation of the trial court's decision in this case was either res adjudicata or estoppel by judgment.

"The former is founded upon the sound proposition that there should be an end to litigation and that in the interest of the State every justiciable controversy should be settled in one action in order that the courts and the parties will not be pothered for the same cause by interminable litigation. On the other hand, estoppel rests upon equitable principles. 50 C. J. S., Judgments §593. Even so, the ultimate purpose of estoppel by judgment is to bring litigation to an end. The difference which we consider exists between res adjudicata and estoppel by judgment is that under res adjudicata a final decree or judgment bars a subsequent suit between the same parties based upon the same cause of action and is conclusive as to all matters germane thereto that were or could have been raised, while the principle of estoppel by judgment is applicable where the two causes of action are different, in which case the judgment in the first suit only estops the parties from litigating in the second suit issues - that is to say points and questions - common to both causes of action and which were actually adjudicated in the prior litigation." Gordon v. Gordon 59 So. 2d 40, 44.

One common denominator of both res adjudicata and estoppel by judgment is that in each, the parties in each of two actions are identical (cf. Donahue v. Davis, 68 So. 2d 163, 169; Universal Const. Co. v. City of Fort Lauderdale, 68 So. 2d 366, 369). These doctrines have been extended and applied to persons in privity with the parties as well as to the parties themselves (see 30 Am. Jur. §161 et seq.), privity being defined as "mutual or successive relationship to the same rights of property" (Black's Law Dictionary, 3rd Ed., at p. 1422).

In order for either the doctrine of res adjudicata or the doctrine of estoppel by judgment to have been applied in the instant case, the plaintiff in this case, L. H. Youngblood, must have been a party to or in privity with the plaintiff in the prior case in which this defendant, Frank Herbert Taylor, was involved. It is a well-founded rule of law that such is not the case.

> "A parent suing for consequential damages resulting to himself from a negligent injury to a minor child is not bound by a judgment rendered in a prior action brought by the child. He is not regarded in law as either a party or a privy to such an action. This rule is not affected by the fact that the parent, as guardian or next friend, was actually the one who instituted the child's action; and in such a case, the parent is not estopped, either by the bringing of the action or by any judgment rendered therein, from afterward recovering in his own right for his expenses and loss of the child's services." 39 Am. Jur. 728.

Numerous cases upheld the rule of law as above set forth (see 116 A. L. R. 1087 et. seq.), and this rule of law inures to the

benefit of defendants as well as plaintiffs (see Employer's Liability Assur. Corp. v. Taylor, 164 Va. 103, 178 S. E. 772). A judgment in a factual situation as here, rendered for either party in either the action by the minor child or the action by the parent is not even admissible in evidence in a subsequent action arising from the same allegedly tortious conduct (39 Am. Jur. 729; Sayre v. Crews (1950 C. A. 5th Ga.) 184 F. 2d 723). In a case identical to the case here, the North Carolina Supreme Court reversed a trial court, stating,

> "The court was in error in holding that the plaintiff in this action, in acting as next friend for his infant daughter as plaintiff in the former action, became a party to such former action and was estopped by the verdict and judgment therein from maintaining the present action..... (Rabil v. Farris et al., 213 N. C. 414, 196 S. E. 321, 322).

Insofar as appellant has been able to determine, the question raised here has not been presented to this Court heretofore. In Coon v. Atlantic Coast Line R. Co., 125 Fla. 490, 171 So. 207, plaintiff, as administrator of the estate of his minor son, had brought a prior suit against defendant which resulted in a verdict and judgment in favor of defendant. In the case above cited, plaintiff brought suit under section 7049, C. G. L. for the wrongful death of his minor son, and as a defense, defendant set up the verdict and judgment in the former action. Plaintiff's demurrer to this defense was overruled and final judgment was entered in favor of the defendant by the trial court. This Court reversed the lower court on the grounds that the prior determination might only have been a finding that:

> "....decedent, who was eighteen years old at the time of the fatal accident, lived in such an extravagant manner that he would not have accumulated any estate at all at the end of his prospective life; or that decedent was so mentally deficient that he would not have accumulated any estate at the end of his prospective life; or the jury might have found that the decedent was partly responsible for the fatal accident due to his habits of recklessness and carelessness, and that by reason of such habits he would not live to reach the age of majority, from which age only the administrator may recover damages;,,,," (at p. 210).

Although not directly overruling the Coon case, supra, a series of later cases have seemingly undermined its authority (Collins v. Hall, 117 Fla. 282, 157 So. 646; Epps v. Railway Express Agency, 40 So. 2d 131; Rehe v. Airport U-Drive, 63 So. 2d 66). In each of these cases, one of the two actions brought by each plaintiff was brought under the death by wrongful act statute, and this Court pointed out, "In either event the same parties would have been beneficiaries of any amount recovered" (Rehe v. Airport U-Drive, 63 So. 2d 66, 67). In such cases, therefore, where the plaintiff brings one action as administrator or executor of a decedent and the other action under the death by wrongful act statute, such plaintiff or plaintiffs are (if not identical) in privity in the two actions, and it would necessarily follow that a determination in one action would be binding in the other. This line of cases may thus be distinguished on this basis from the case at bar.

In the case of negligent injury to a minor child, two distinct causes of action accrue with different elements of damages resulting and recoverable for the benefit of separate and distinct plaintiffs.

(Miami Paper Co. V. Johnston, 58 So. 2d 869, 871). A waiver of the child's claim will not affect the claim of the parent, as plaintiff in his own behalf:

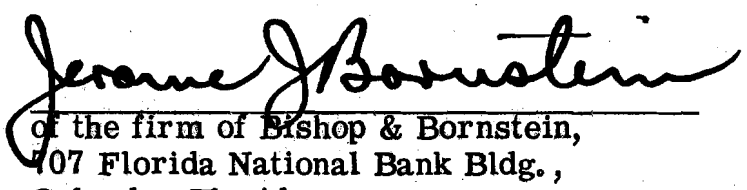
> "For the personal injury, pain, disfigurement, and permanent disability of a child inflicted by a tort committed on it, the father can recover no damages; but the child must, if he recovers for such, sue therefor by its guardian or next friend. The common law afforded the parent as such no remedy for injury to his child. He could recover only his pecuniary loss as a result of the injury, and such loss was limited to two elements: (1) The loss of the child's services and earnings, present and prospective, to the end of the minority; and (2) medical expenses in effecting or attempting to effect a cure. The father's right of action being at all times independent of that of the child, if the child waive his right to sue, such waiver does not bar the father's right." (Wilkie v. Roberts, 91 Fla. 1064, 109 So. 225, 227).

As a waiver of the minor child's claim will not affect the claim of the parent as plaintiff, so a judgment in favor of or against the child will not affect the claim of the parent as plaintiff in his own behalf. By entering summary final judgment in favor of the defendant here, the trial court committed error.

CONCLUSION

It is respectfully submitted that this case be reversed.

Respectfully submitted,



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