

COLLATERAL ESTOPPEL

Florida has long held that in order for a judgment in one suit to preclude a judgment in a second related suit both the issues and parties must be identical. *Colonial Enterprises, Inc. v Hill*, 227 So.2d 481 (Fla. 1969), *Seaboard Coastline Railroad Co. v Cox*, 338 So.2d 190 (Fla. 1976). The Federal Courts and a number of other states have abandoned the requirements of mutuality of parties in the application of collateral estoppel but the Supreme Court of Florida recently refused to follow their lead in *Stogniew v McQueen*, 656 So.2d 917 (Fla. 1995).

In *E.C. v Katz*, 711 So.2d 1155 (Fla. 4th DCA 1998), the Fourth District raised a distinction between offensive and defensive collateral estoppel. In that case, the mother of a child who was alleged to have been sexually abused by the child's father brought a medical malpractice lawsuit alleging the failure to diagnose the sexual abuse of the child. The doctor defended on the grounds that the same issue had been determined in the dissolution of marriage proceeding on the issue of custody and in that proceeding the family court had determined that no sexual abuse had taken place. The trial court entered a summary judgment finding that the determination in the dissolution

proceeding barred the malpractice suit. The Fourth District affirmed, concluding that in the circumstances of that case the parties did not have to be identical, basing its holding on the distinction between defensive and offensive collateral estoppel. There the Fourth District distinguished the Supreme Court's holding in *Stogniew*, supra, and held:

the Florida Supreme Court has continued to adhere to [mutuality of parties] in the context of offensive use of collateral estoppel. See *Trucking Employees of N. Jersey Welfare Fund, Inc., v Romano*, 450 So.2d 843 (Fla. 1984); *Stogniew*, 656 So.2d at 917. However, the instant case is different because it involves a defensive use of collateral estoppel. Thus, our reliance on *Selz*, [*United Servs. Auto. Ass'n v Selz*, 637 So.2d 320 (Fla. 4th DCA 1994)] which specifically states that 'identity of parties is irrelevant for the application of defensive collateral estoppel,' does not run afoul of the Florida Supreme Court's reluctance to adopt the federal courts' wholesale abolition of the mutuality of parties requirement.

The Supreme Court has recently reversed the Fourth District on this issue in the case of *E.C. v Katz*, 24 F.L.W. S152 (Fla. April 1, 1999). In a per curiam opinion, the Court held that under Florida law collateral estoppel requires mutuality of parties whether applied offensively or defensively. The sole exception to that rule is found in *Zeidwig v Ward*, 548 So.2d 209 (Fla.

1989). There a criminal defendant, who was unsuccessful in reversing his conviction on the basis of ineffective assistance of counsel, was found to be

estopped to make the same claim in a legal malpractice action against his defense attorney. The Supreme Court held, however, that that exception was limited to its facts and that the Stogniew decision, supra, applied both offensively and defensively.

Two things are clear pursuant to a fair reading of Stogniew: (1) the requirement of mutuality of parties is a general rule that applies to its defensive use; and (2) the sole exception to this rule carved out in attorney malpractice suits following resolution of ineffective assistance of counsel claims is to be read as narrowly as possible - this Court could not have made its limitation of Zeidwig any greater. See Stogniew, 656 So.2d at 919.

In the present case, it is clear that collateral estoppel does not bar relitigation of the alleged abuse of J.K.C. because the respondents were not parties to the previous proceedings. This case falls squarely within our traditional requirement that there be mutuality of parties in order for collateral estoppel to apply defensively.

Despite inroads made by the Federal Courts; Florida adheres to the principal that mutuality of parties is necessary for a party to be barred by collateral estoppel.

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