IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AN FOR NEW CASTLE COUNTY

JOANNA MICHELL, Plaintiff,	)	
5.	)	C. A. No. 00C-03-261 CHT
WENDY COOK and THEODORE W. MICHELL Defendants.	)	

MEMORANDUM OPINION

On the Defendant Theodore W. Michell's
Motion Regarding Proximate Cause

Originally Submitted: May 4, 2001
Resubmitted: December 6, 2001
Decided: December 10, 2001

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TOLIVER, JUDGE

STATEMENT OF FACTS AND NATURE OF PROCEEDINGS

This case arises out of personal injuries suffered by the Plaintiff, Joanna Michell, in a motor vehicle collision that occurred on June 24, 1998. Ms. Michell was a passenger in the vehicle driven by her father, Defendant Dr. Theodore W. Michell. Dr. Michell's vehicle collided with a vehicle driven by Defendant Wendy Cook at the intersection of U.S. Route 202 and Delaware Route 141 in Wilmington, Delaware. As a result of this collision, Ms. Michell filed a lawsuit against Dr. Michell and Ms. Cook alleging that they jointly and/or severally caused the accident and were therefore liable for the injuries she suffered on that date. Both Defendants filed cross-claims alleging negligence of the other as the sole and proximate cause of the accident. Ms. Michell had no recollection of the accident due to the severity of her injuries.

Prior to the initiation of the instant litigation, Ms. Cook had filed a separate lawsuit, Cook v. Michell, Del. Super., C.A. No. 99C-02-083, against Dr. Michell arising out of the same accident, alleging that Dr. Michell was negligent in the operation of his vehicle and that negligence was the sole cause of the accident and the injuries that she suffered.

Ms. Michell did not seek to join as a party to that litigation, nor did the other parties seek to join her. The case was tried before a jury on August 1 and 2, 2000. The jury returned a verdict in favor of Dr. Michell having found that he was not negligent.

Based on the verdict in Cook v. Michell, Dr. Michell filed a motion asking the Court to find as a matter of law that he was not the proximate cause of the accident in which Ms. Michell was injured. He contends that because the issue of his negligence in this matter was previously litigated, albeit in a separate lawsuit, Ms. Michell is collaterally estopped from relitigating the issue in the case sub judice. Stated differently, he argues that he was exonerated by the verdict in Cook v. Michell and cannot be held responsible to either Ms. Michell or Ms. Cook in their repetitive direct and cross-claims against him.

Ms. Michell has opposed the motion. She asserts that because she was not a party to the Cook v. Michell litigation, she was not afforded a full and fair opportunity to litigate the issue of fault in the accident. Nor was she in privity with either of the parties to the action and as a result, the Doctrine of Collateral Estoppel is not applicable to her. The

issue which must therefore be resolved is whether under these circumstances, Ms. Michell is precluded from relitigating the issue of whether Dr. Michell's conduct on June 24, 1998 was negligent in such a matter as to have caused the accident in which she was injured.

DISCUSSION

Regarding the Doctrine of Collateral Estoppel, the Supreme Court has held:

> The doctrine of collateral estoppel essentially prohibits a party who has litigated one cause of action from relitigating in a second cause of action matters of fact that were, or necessarily must have been, determined in the first action. A claim will be collaterally estopped only if the same issue was presented in both cases, the issue was litigated and decided in the first suit, and the determination was essential to the prior judgment. The defendant in the second lawsuit may properly assert the defense of collateral estoppel to prevent the plaintiff from litigating issues that the plaintiff previously litigated and lost . . .

Sanders v. Malik, Del. Supr., 711 A.2d 32, 33-34 (1998).

Historically the courts have also extended this doctrine to parties in privity with the original partes. Foltz v. Pullman, Inc., Del. Super., 319 A.2d 38, 40 (1974). "The concept of privity pertains to the relationship between a party to a suit and a person who was not a party but whose interest in the action was such that he will be bound by the final judgment as if he were a party." Id. at 41. In recent years however, the Courts have taken the Doctrine of Collateral Estoppel a step further in holding that mutuality, or privity, need not be present in order to apply collateral estoppel. Chrysler Corp., v. New Castle County, Del. Supr., 464 A.2d 75, 79 (1983). However, in Kohls v. Kenetech Corp., the Chancery Court established that while mutuality is not required, "it in no way allows a victorious defendant to assert that other plaintiffs, not parties to the prior action, are barred from relitigating facts found in that litigation." Del. Ch., Civ. A. No. 17763-NC, Lamb, V.C. (July 26, 2000)(Mem. Op). More specifically, "preclusion can properly be imposed when the

claimant's conduct induces the opposing party to reasonably suppose that the litigation will firmly stabilize the latter's legal obligations." Id. at 4 (citing Restatement (Second) of Judgments §62 (1982)). In this regard, a party "should not be allowed to relitigate a factual issue that was already decided in a prior suit in which [the party] had a full and fair opportunity to present [its] case." Kohls at 3, quoting Foltz, 319 A.2d at 40.

Based upon the authority set forth above, the Court must conclude that Dr. Michell is entitled to the relief sought. Mutuality or privity between parties is not necessary in order to find that a party which has become involved in subsequent litigation is collaterally estopped from pursuing an issue that was addressed and resolved in the original dispute. There must however be some nexus between that party and that first dispute. It is because that connection exists here that Ms. Michell cannot be allowed to continue with her claim

against Dr. Michell.[1]

First, the prior litigation resolved the question of whether Dr. Michell's actions on June 24, 1998 were negligent in a manner that proximately caused the accident. By its verdict, the jury said no. The issues resolved there are the same as those Ms. Michell raises in her complaint. Moreover, while they are not aligned in a legal sense, as a practical matter, Ms. Cook's cause of action against Dr. Michell appears to be identical to Ms. Michell's claim against him.

Second, Dr. Michell could have reasonably expected that Cook resolve any issues regarding his alleged negligence in bringing about the accident. Relitigating those issues would raise the risk of inconsistent verdicts. And, given the fact that Ms. Michell has no recollection of the accident, there is nothing she could add in the present litigation that Ms. Cook did not pursue in her case.

[1] Neither side disputes that the remaining requirements of collateral estoppel are present.

While this case might not fall within the most narrowly construed definition of the Doctrine of Collateral Estoppel, it certainly embodies the spirit and purpose behind the rule. As unfortunate as it may be for Ms. Michell, to reach any other result would not be in the overall interest of justice.

CONCLUSION

In light of the foregoing, the Defendant's motion must be, and hereby is, **granted**.

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Toliver, Judge