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IN THE
COURT OF APPEALS OF INDIANA

Zachary Miller,

Appellant-Plaintiff,

v.

Laxeshkumar Patel, M.D.; John Schiltz, M.D.; Benjamin Coplan, M.D.; Community Physicians of Indiana, Inc.; and Community Howard Regional Health, Inc. d/b/a Community Howard Behavioral Health,

Appellees-Defendants.

May 24, 2022

Court of Appeals Case No. 21A-CT-2500

Appeal from the Howard Superior Court

The Honorable William C. Menges, Jr., Judge

Trial Court Cause No. 34D01-1903-CT-651

Baker, Senior Judge.

[1] Zachary Miller appeals the trial court's entry of summary judgment in favor of the Appellees ("Providers"). Concluding the trial court erred by granting summary judgment to Providers, we reverse and remand.

Issue

[2] The dispositive issue in this case is whether the trial court erred by granting summary judgment in favor of Providers on Miller's claim of medical malpractice.

Facts and Procedural History

[3] On several occasions in December 2016 and early January 2017, Providers rendered care and treatment to Miller regarding his mental health issues. On January 9, Miller killed his grandfather. As a result, the State charged Miller with murder, aggravated battery as a Level 3 felony, and voluntary manslaughter as a Level 2 felony. Miller pleaded guilty but mentally ill to voluntary manslaughter and was sentenced to twenty years, twelve of which was executed.

[4] In the meantime, Miller filed a proposed complaint for damages with the Department of Insurance, alleging Providers had committed medical malpractice in their treatment of him which resulted in him suffering mental trauma, emotional distress, and loss of his freedom. The Medical Review Panel found that Providers failed to comply with the appropriate standard of care and that this failure was a factor in the resulting damages alleged by Miller.

[5] This action was commenced when Miller filed a complaint for damages against Providers in the trial court. Providers subsequently filed their motion for summary

judgment, to which Miller responded. Following a hearing, the court granted summary judgment to Providers. Thereafter, Miller's motion to reconsider was denied, and this appeal followed.

Discussion and Decision[1]

[6] Miller contends the trial court erred by granting summary judgment for Providers. Providers allege that Miller should not be permitted to relitigate his criminal responsibility for the killing of his grandfather in this civil suit. In support of this assertion, Providers argued to the trial court that Miller's claim for damages is barred as a matter of public policy and by the doctrine of collateral estoppel. We address each in turn.

[7] We review de novo a trial court's ruling on summary judgment. *Morris v. Crain*, 71 N.E.3d 871, 879 (Ind. Ct. App. 2017). On appeal from a summary judgment, we apply the same standard of review as the trial court: summary judgment is appropriate only where the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Young v. Hood's Gardens, Inc.*, 24 N.E.3d 421, 423-24

[1] We take this opportunity to remind counsel that compliance with our appellate rules is not optional. As noted by Providers, Miller's brief falls short of compliance with the rules, and, given the deficiencies, Providers request us to deem Miller's issues waived and affirm the judgment of the trial court. Whenever possible, "'we prefer to resolve cases on the merits' instead of on procedural grounds like waiver." *Pierce v. State*, 29 N.E.3d 1258, 1267 (Ind. 2015) (quoting *Roberts v. Cmty. Hosps. of Ind., Inc.*, 897 N.E.2d 458, 469 (Ind. 2008)). Accordingly, "unless we find a party's 'non-compliance with the rule[s] sufficiently substantial to impede our consideration of the issue raised,' we will address the merits of [the] claim." *Pierce*, 29 N.E.3d at 1267 (quoting *Guardiola v. State*, 268 Ind. 404, 375 N.E.2d 1105, 1107 (1978)). In this case, our review has not been impeded to that extent.

(Ind. 2015); *see also* Ind. Trial Rule 56(C). As our Supreme Court has cautioned, summary judgment is a "blunt instrument" by which the non-prevailing party is prevented from having its day in court. *Hughley v. State*, 15 N.E.3d 1000, 1003 (Ind. 2014). In light of this, we must carefully assess the trial court's decision, ever mindful that "Indiana consciously errs on the side of letting marginal cases proceed to trial on the merits, rather than risk short-circuiting meritorious claims." *Id.* at 1004.

A. Public Policy

[8] With regard to the public policy concerning these types of cases, the parties cite *Rimert v. Mortell*, 680 N.E.2d 867 (Ind. Ct. App. 1997), *trans. denied*. There, Gary Rimert was diagnosed with mental health issues and hospitalized in Indiana. After nearly a month in the hospital, he was released and two days later drove to South Carolina where he killed his grandparents and two of their neighbors with a kitchen knife. He asserted the insanity defense to the charges of murder but was found guilty but mentally ill by a jury. Thereafter, in Indiana, his mother, on his behalf, submitted a proposed complaint for medical malpractice against his treating doctor, claiming that the doctor had negligently discharged Rimert from the hospital and that the murders and Rimert's imprisonment all resulted from the doctor's negligence. Rimert's mother settled with the doctor's insurance carrier and then petitioned to obtain excess damages from the Patient's Compensation Fund for Rimert's loss of enjoyment of life due to his imprisonment, for his legal defense fees, and for his emotional distress. Following a bench trial, the court

denied the petition, holding that the kind of damages Rimert requested are not compensable under Indiana law.

[9] On appeal, this Court acknowledged the general rule of public policy that a person cannot maintain an action if, in order to establish the cause of action, he must rely, in whole or in part, on an illegal or immoral act or transaction to which he is a party or on his violation of the criminal statutes. *Id.* at 871-72. We further noted that the purpose of this rule is to prevent those who knowingly and intentionally engage in serious illegal acts from imposing liability upon others for the consequences of their own behavior. *Id.* at 872. Finally, we held it to be the public policy of this state that:

> an individual who has been convicted of a crime should be precluded from imposing liability upon others, through a civil action, for the results of his or her own criminal conduct. Consequently, a person may not maintain an action if, in order to establish the cause of action, he or she must rely, in whole or in part, upon an illegal act or transaction to which he or she is a party or upon a violation by him or herself of the criminal laws.

Id. at 874. Simply stated, it is against public policy to allow a criminal defendant to shift responsibility for the consequences of his or her criminal acts to third parties.

[10] With our adoption of this public policy, we noted an important limitation—the controlling consideration to imposing this policy is the plaintiff's legal responsibility for the criminal act in question. *Id.* By that we mean, to the extent that a plaintiff was not responsible for the underlying criminal act, for example by reason of legal insanity, the plaintiff's action would not be barred as violative of

public policy. *Id.* at 874-75. Thus, a problem arises when it is unclear whether the plaintiff is legally responsible for the criminal act in question. *Id.* at 874.

[11] We encounter just such a problem in the present case—it is unclear whether Miller is legally responsible for his criminal act. Although Miller entered a plea of guilty but mentally ill to his criminal charge, in this civil action he claims that he was insane at the time of the killing. The rationale behind this claim is that an insane person is not held criminally responsible for his acts. *Galloway v. State*, 938 N.E.2d 699, 708 (Ind. 2010); Ind. Code § 35-41-3-6(a) (1984) ("A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense."). Miller bases his claim on the report of Dr. Frank H. Krause, a psychologist who evaluated Miller pursuant to court order to determine his sanity at the time of the offense. Dr. Krause concluded that Miller was insane at the time of the killing, and Miller designated his report in response to Providers' motion for summary judgment in this case.

[12] Further, Miller has not based his civil claims against Providers on his criminal act. Rather, his complaint, which is included in his designated evidence, alleges damages based on Providers' failure to comply with the appropriate standard of care. While Miller's felony conviction may be admitted into evidence in the civil action, it is not necessarily conclusive proof therein of the facts upon which his conviction was based. *See Sigo v. Prudential Prop. & Cas. Ins. Co.*, 946 N.E.2d 1248, 1252 (Ind. Ct. App. 2011), *trans. denied*; *see also* Ind. Code § 34-39-3-1(a) (1998) (evidence of final judgment for crime punishable by death or imprisonment for

more than one year is admissible in civil action to prove any fact essential to sustaining judgment and is not excluded from admission as hearsay).

[13] A similar situation arose in the Illinois case of *Boruschewitz v. Kirts*, 197 Ill. App. 3d 619, 554 N.E.2d 1112 (1990), which was cited by this Court in *Rimert*. There, while an outpatient under the care of a doctor at a mental health center, Boruschewitz shot and killed two people. She was charged with murder and entered a plea of guilty but mentally ill. Boruschewitz then brought an action against the doctor and the center, alleging their negligence caused her mental condition to deteriorate until she ultimately became insane such that she could not conform her conduct to the requirements of the law and killed two people. The trial court dismissed her claims as against public policy, but the appellate court reversed that dismissal because Boruschewitz specifically alleged in her complaint that she was insane at the time of the killings instead of alleging that she committed a criminal act. *Id.* at 623. The court further determined that, while Boruschewitz's conviction on her plea of guilty but mentally ill may be admitted in her negligence case, it only establishes a prima facie case that the underlying acts took place, and she should be allowed an opportunity to rebut the prima facie case and prove she was criminally insane and thus not guilty of a crime. *Id.* The court recognized that this is a question of fact. *Id.*

[14] Likewise, our courts acknowledge that it is for the trier of fact to determine whether the defendant appreciated the wrongfulness of his conduct at the time of the offense. *Myers v. State*, 27 N.E.3d 1069, 1075 (Ind. 2015). Therefore, in a summary judgment setting where the movant has the burden of demonstrating that

the designated evidentiary matter shows there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law, summary judgment on this issue is inappropriate. *See Young*, 24 N.E.3d at 423-24. Moreover, this Court has stated that the public policy of precluding a convicted individual from imposing upon others civil liability for his criminal conduct is not justified and should not operate to preclude a civil action when the convicted individual-plaintiff is not responsible for the act in question. *Rimert*, 680 N.E.2d at 874-75. Accordingly, our public policy should not preclude Miller from attempting to rebut the facts as established by his criminal conviction and prove that he was criminally insane at the time of the killing and thus not responsible for the act.

B. Collateral Estoppel

[15] In moving for summary judgment, Providers also raised the doctrine of collateral estoppel. While a felony conviction is admissible as evidence in a civil action, it is not necessarily conclusive proof of the facts upon which the conviction was based. *Sigo*, 946 N.E.2d at 1252. Nevertheless, the conviction may provide a basis for the use of collateral estoppel. *Meridian Ins. Co. v. Zepeda*, 734 N.E.2d 1126, 1131 (Ind. Ct. App. 2000), *trans. denied* (2001).

[16] Generally, collateral estoppel—also referred to as issue preclusion—bars the subsequent litigation of a fact or issue that was adjudicated in a former lawsuit. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). In such a situation, the former adjudication is conclusive in the subsequent action only as to those issues that were actually litigated and determined therein, even if the actions are based on

different claims. *Id.* However, collateral estoppel does not extend to matters that were not expressly adjudicated or can be inferred only by argument. *Id.*

[17] There are two categories of collateral estoppel—offensive and defensive. *MicroVote Gen. Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184, 198 (Ind. Ct. App. 2010). Collateral estoppel is defensive when a defendant seeks to prevent a plaintiff from asserting an issue that the plaintiff has previously litigated and lost against another defendant. *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034, 1037 (Ind. 1993) (citing *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 326 n.4, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)). The party asserting collateral estoppel has the burden of showing it is entitled to application of the doctrine. *Reid v. State*, 719 N.E.2d 451, 456-57 (Ind. Ct. App. 1999). Here, Providers make a claim of defensive collateral estoppel and, thus, have the burden of showing they are entitled to its use.

[18] The primary considerations in deciding whether the defensive use of collateral estoppel is appropriate are (1) whether the party against whom the prior judgment is asserted had a full and fair opportunity to litigate the issue and (2) whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel. *In re Commitment of Heald*, 785 N.E.2d 605, 612 (Ind. Ct. App. 2003), *trans. denied*. Our review of a trial court's decision regarding the use of collateral estoppel is subject to an abuse of discretion standard. *State v. Barnett*, 176 N.E.3d 542, 553 (Ind. Ct. App. 2021), *trans. denied*, 180 N.E.3d 933 (Ind. 2022). "'An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before the court or if the court has misinterpreted the law.'" *Willis v. Dilden Bros., Inc.*, 184 N.E.3d 1167, 1182 (Ind.

Ct. App. 2022) (quoting *Poiry v. City of New Haven*, 113 N.E.3d 1236, 1239 (Ind. Ct. App. 2018)).

[19] With all of this in mind, we turn for guidance to a decision of the Illinois Supreme Court which specifically addressed the application of defensive collateral estoppel in a medical malpractice action following the plaintiff's guilty plea to criminal charges. Although the Illinois court's decision is not binding precedent upon this Court, we accord the decision and the reasoning supporting it respectful consideration.

[20] In *Talarico v. Dunlap*, the Illinois Supreme Court held that the application of collateral estoppel must be determined on a case-by-case basis and that, although the plaintiff pleaded guilty to prior criminal charges, collateral estoppel did not preclude relitigation of his claim that medication caused him to engage in the criminal conduct. 177 Ill. 2d 185, 685 N.E.2d 325 (1997). The court pointedly declared that collateral estoppel is "a flexible doctrine which defies rigid or mechanical application," *id.* at 329-30; *see also* Restatement (Second) of Judgments § 28, cmt. g (1982) (policy supporting issue preclusion is not so unyielding that it must invariably be applied, but exception should be made only when need for redetermination of issue is compelling), and that the question of whether a party had a full and fair opportunity to contest a prior determination "cannot be reduced to a simple formula." *Id.* at 330.

[21] Specifically directing its attention to a situation involving a plea agreement, the court stated:

> Ordinarily, when a fact has been admitted by a litigant, it is reasonable to presume that the fact is established and that the fact should not be subject to relitigation. We do not believe, however, that the same may be said in every case of a negotiated guilty plea.
>
> Negotiated pleas serve an important administrative function in our criminal justice system. Such pleas, by design, dissuade litigation. A decision to accept a plea is often the result of weighing a myriad of factors, the reduction of the charge and resulting sentence being a significant factor but only one of those factors. Because in the case of negotiated pleas it does not necessarily follow that the failure to deny reflects only a defendant's desire to receive a reduced sentence, for collateral estoppel purposes consideration of more than the fact of the "admission" is required.

Id. (citation omitted). The court then analyzed Talarico's plea under an incentive-to-litigate lens. Based on factors such as Talarico's plea agreement affording him a significant reduction in charges and sentence, mitigation evidence concerning his lack of criminal history, the medicine's side effect of aggressive behavior, and his status as a second-year medical student, the court concluded that the incentive to litigate the criminal offense was not fully present in Talarico's case.

[22] Turning to our own state's precedent in these types of cases, this Court's analysis of the propriety of the application of collateral estoppel in *Rimert* was brief. It simply determined that Rimert had a full and fair opportunity to litigate the issue of his criminal responsibility for the murders because he had a jury trial at which he "zealously defended against his criminal charges" and yet was still found guilty but mentally ill by the jury. *Rimert*, 680 N.E.2d at 876.

[23] More recently, in *Pritchett v. Heil*, 756 N.E.2d 561 (Ind. Ct. App. 2001), this Court again considered the appropriateness of the application of collateral estoppel. There, Heil sued the county sheriff after she was convicted of prostitution in connection with sex acts she performed with a jailer when she was an inmate at the county jail. We concluded that the application of collateral estoppel was appropriate because Heil had a full and fair opportunity to litigate the issue of her criminal responsibility during her criminal jury trial. We based this conclusion on our determination that Heil, who asserted that her incarceration rendered her unable to voluntarily consent to the sexual contact, "had every incentive to, and did in fact, vigorously defend" against her criminal charge, but "the jury apparently rejected her claims and found her guilty." *Id.* at 565.

[24] We turn our focus now to the present case and our inquiry into Miller's incentive to litigate. In doing so, we are mindful that, as the Illinois Supreme Court so eloquently articulated, "the refusal to give [a defendant's] criminal judgment preclusive effect should not occur without a compelling showing of unfairness, nor should it be based on a conclusion that the criminal judgment was erroneous." *Talarico*, 685 N.E.2d at 330 (citing Restatement (Second) of Judgments § 28, cmt. j (1982)).

[25] Unlike the defendants in both *Rimert* and *Heil*, Miller did not exercise his right to a criminal jury trial. Instead, he pleaded guilty but mentally ill. Consequently, a trier of fact has not heard evidence or passed judgment on Miller's sanity or intent with regard to the killing of his grandfather.

[26] To oppose Providers' motion for summary judgment, Miller designated the transcript of his sentencing hearing. Miller's mother testified at the hearing that the week prior to the killing she felt as though she and her family were in danger. When asked whether she reached out to medical professionals for help, she responded, "Yes. I begged them to admit Zach several times. . . . They told me to make sure he makes it to his group meetings. They never helped him." Appellant's App. Vol. 2, p. 141. It appears the Prosecutor, too, was aware of the role the lack of treatment played in Miller's actions. Prior to the court announcing Miller's sentence, the Prosecutor stated, "I just want to say this to the family and to Zach, you know the system has failed him and has failed the citizens of this county in not being able to properly address Zach's issues earlier and prior to the death of his grandfather," and the "lack of actions on behalf of our mental health system has [ ] seriously impacted this community and more importantly this family." *Id.* at 185, 186.

[27] In mitigation, defense counsel offered the statutory factor that there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense. *See* Ind. Code § 35-38-1-7.1(b)(4) (2015). Counsel stated:

> We have two doctors that believed that Zach was not sane at the time of the incident. We raised the insanity defense and if Zach was found [ ] insane by either the Court or a jury, this case would have been over. He would go to a state hospital and be under a civil commitment indefinitely until they deemed him appropriate to go into society. It was a very difficult decision of whether we should take this plea or go to a jury trial on the insanity defense. It was one that the family and Zach struggled with [ ] and made a very thoughtful and careful decision to go

> this route. Part of that decision was that even though two doctors found that, there was one doctor that found that Zach was sane and we don't know what the trier of fact would do so I don't believe that it would [ ] establish a defense, however, the insanity does justify or excuse the offense under the law if he was found insane.

Appellant's App. Vol. 2, p. 189. In pronouncing sentence, the trial court found Miller's mental health issues to be a mitigating circumstance that established substantial grounds to excuse or justify the offense. *Id.* at 196. It also included a recommendation and specific request that Miller "be placed in the most appropriate facility and the most appropriate programs that will help him to continue his mental health treatment." *Id.* at 197.

[28] Next, we undertake an examination of the second factor: whether it would be otherwise unfair under the circumstances to permit the use of collateral estoppel. In *Heil*, we found it was not unfair to apply collateral estoppel against Heil under the circumstances—i.e., a once-criminal-defendant-now-turned-civil-plaintiff presenting in her civil action the same defense (i.e., non-consensual contact) as she presented in her criminal action and "which was expressly rejected on the same issue by a jury." 756 N.E.2d at 566.

[29] Miller has not presented evidence of his insanity to a trier of fact; however, in his designation of evidence he included the report of Dr. Frank H. Krause, the psychologist who performed a psychiatric evaluation of Miller in May 2018 pursuant to court order. *See* Appellant's App. Vol. 2, pp. 51-60. Dr. Krause concluded that Miller was insane at the time he harmed his grandfather. *Id.* at 59.

[30] Additionally, psychiatrist Dr. Jeffrey J. Kellams provided his evaluation of the psychiatric care Miller received from Providers in December 2016 and January 2017, and Miller designated this report as well. Dr. Kellams concluded:

> From a treatment standpoint there are three psychiatrists involved in this case who did not meet the standard of care in terms of recognizing the severity and increasing intensity of the symptoms of this patient's schizophrenic illness. These include Dr. Patel, Dr. Schiltz, and Dr. Coplan. Their failure to do so cost a human life and also resulted in a chronically and severely ill young man being charged for murder for which he is now jailed. He required admission and commitment to a psychiatric facility where he could be contained and treated appropriately with psychotropic medication until stable and able to recognize his need for ongoing psychiatric treatment and medication management.

Id. at 62. Furthermore, Miller included in his designation the Medical Review Panel Opinion. It sets forth the unanimous decision of the medical review panel that Providers failed to comply with the appropriate standard of care in their treatment of Miller and that their conduct was a factor of the resultant damages. *See id.* at 120-23.

[31] In light of the evidence of both the State's and the trial court's awareness concerning the role the lack of mental health treatment had in Miller's actions and the consideration given by the trial court to the mitigating evidence of substantial grounds that excused or justified the crime, we conclude Miller did not have a full and fair opportunity to litigate the issue of his criminal responsibility in the

criminal case. Additionally, under the circumstances presented here it would be otherwise unfair to apply collateral estoppel to preclude Miller from attempting to rebut the inference of his sanity established by his plea of guilty but mentally ill. Consequently, Providers, whose burden it was to show they were entitled to the use of collateral estoppel, have failed, and the trial court's application of collateral estoppel to preclude Miller's civil claim was in error.

[32] While we recognize that our holding allows for potentially inconsistent determinations of fact in a criminal trial and a subsequent civil action, we nonetheless believe that, in the circumstances before us, affording Miller the opportunity to have his day in court to fully litigate his medical malpractice claim overrides our apprehension about the potential for inconsistent determinations. As did our colleagues in Illinois, "we believe it would be unfair to create a situation in which a criminal defendant who, after balancing the costs and risks of trial, chooses to accept a plea negotiation is said to automatically forfeit his right to a civil trial." *Talarico*, 685 N.E.2d at 331. Indeed, we are mindful that our open courts clause mandates, "All courts shall be open; and every person, for injury done to him in his person, property, or reputation, shall have remedy by due course of law. Justice shall be administered freely, and without purchase; completely, and without denial; speedily, and without delay." IND. CONST. art. 1, § 12. This clause thus "'guarantees access to the courts to redress injuries to the extent the substantive law recognizes an actionable wrong.'" *Escamilla v. Shiel Sexton Co., Inc.*, 73 N.E.3d 663, 666 (Ind. 2017) (quoting *Smith v. Ind. Dep't of Corr.*, 883 N.E.2d 802, 807 (Ind. 2008)). Additionally, we are concerned that to rule

otherwise and refuse "to look behind the curtain of the negotiated guilty plea" would require every criminal defendant with a potential civil suit to proceed with a criminal trial, regardless of the risks. *Talarico*, 685 N.E.2d at 331. This would result in the acceptance of fewer plea agreements, which would, in turn, cause our trial courts to function less efficiently.

Conclusion

[33] Based on the foregoing, we conclude Providers failed to show that there was no genuine issue of material fact regarding the allegations of Miller's complaint and that they were entitled to judgment as a matter of law. Therefore, summary judgment was not proper. We reverse and remand this matter for proceedings consistent with this opinion.

[34] Reversed and remanded.

May, J. and Pyle, J., concur.