

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KENNETH MARAZON AND JAY MARAZON,

UNPUBLISHED  
July 9, 1996

Plaintiffs-Appellants,

v

No. 182131  
LC No. 92-000918 CZ

MONROE COUNTY, OFFICE OF MONROE  
NARCOTICS INVESTIGATION, MONROE  
COUNTY SHERIFF, ENRICO J. GALIMBERTI  
AND ARNOLD PHILLIPS,

Defendants-Appellees.

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Before: Cavanagh, P. J., and Hood and J. J. McDonald\*, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting summary disposition pursuant to MCR 2.116(C)(7) and (C)(10) with respect to their tort claims arising out of defendants' execution of a search warrant at their home. We affirm.

Defendants confiscated a bag of marijuana, approximately \$4,000, and other personal property during the execution of a search warrant at plaintiffs' home. Kenneth Marazon was arrested, but criminal charges against him were dismissed after the district court quashed the search warrant. His property was eventually returned to him when the corresponding civil forfeiture action was likewise dismissed.

Kenneth Marazon and his minor son, Jay, who was present in the home at the time of the search, commenced this action in Monroe Circuit Court against defendants, asserting several tort claims and a claim for violations of their Fourth Amendment rights under 42 USC §1983. After this action was removed to federal court, the federal court determined the warrant and search were valid and granted defendants' motion for summary judgment with respect to plaintiffs' §1983 claim and remanded the remaining claims to the circuit court. Plaintiffs did not appeal that decision. On remand, the trial court

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\* Circuit judge, sitting on the Court of Appeals by assignment.

granted defendants' motion for summary disposition with respect to the remaining claims on the basis of collateral estoppel and governmental immunity.

Plaintiffs contend that the trial court erroneously determined that they were barred by the doctrine of collateral estoppel from litigating issues involving the validity of the search warrant. We disagree.

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. [*Bullock v Huster*, 209 Mich App 551, 556; 532 NW2d 202 (1995).]

The federal court's order granting summary judgment is a final disposition on the merits, *City of Detroit v Qualls*, 434 Mich 340, 356 n.27; 454 NW2d 374 (1990), and consequently, precludes relitigation of issues that were actually and necessarily determined. *Bullock, supra* at 556; see *In re Forfeiture of \$1,159,420*, 194 Mich App 134, 144-146; 486 NW2d 326 (1992) (a decision of the federal court may have collateral estoppel implications on a state court action).

In deciding defendants' motion for summary judgment with respect to plaintiffs' §1983 claim, the federal court necessarily inquired into the validity of the warrant and properly resolved issues regarding the specificity of, and information contained in, it, and whether defendants acted in bad faith in obtaining the warrant. *Hartzler v The Licking Co Humane Society*, 740 F Supp 470, 473 (SD Ohio, 1990). Contrary to plaintiffs' assertion, the federal court was not obligated under the doctrine of collateral estoppel to follow the district court's determinations with respect to these issues because defendants were not parties to the criminal proceedings. *Schwab v Wood*, 767 F Supp 574, 582 (D Del, 1991); *Harris v Jones*, 471 NW2d 818, 820 (Iowa, 1991). We also conclude that public policy does not mandate that plaintiffs be permitted to relitigate these issues because they had ample incentive to fully litigate them in the federal proceeding. Although constitutional issues involving the search warrant underlie plaintiffs' tort claims, the claim that was actually premised on these violations was plaintiffs' §1983 claim. Given the nature of the claims, plaintiffs' attempt to expand on their constitutional claims after summary judgment has been granted contravenes the purposes of collateral estoppel-- "to relieve parties of multiple litigation, conserve judicial resources, and encourage reliance on adjudication." *Eaton Co Road Comm'rs v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994). Accordingly, since the validity of the search warrant was necessarily determined by the federal court and issues regarding the specificity of, and information contained in it, and whether defendants acted in bad faith in obtaining the warrant, were actually litigated in the federal proceeding, we find that plaintiffs are barred by the doctrine of collateral estoppel from relitigating the issues in the present action. *Bullock, supra* at 556.

Next, we find that the application of collateral estoppel in this case proves fatal to plaintiffs' claims.<sup>1</sup> Since defendants were lawfully on plaintiffs' premises pursuant to a valid search warrant and legally seized property for forfeiture purposes, *In re Forfeiture of \$1,159, 420, supra* at 144-146, plaintiffs' claims for trespass and conversion were properly dismissed because the claims require

wrongful or unauthorized conduct. *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992); *Cloverleaf Car Co v Phillips Petroleum Co*, 213 Mich App 186, 195; 540 NW2d 297 (1995). Plaintiffs claims for false arrest and false imprisonment are similarly precluded because defendants' actions were lawful. *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). Plaintiffs were lawfully detained during the execution of a valid search warrant. *Michigan v Summers*, 452 US 692, 705; 101 S Ct 2587; 69 L Ed 2d 340 (1981). When marijuana was discovered in the refrigerator, defendants had probable cause to arrest Kenneth Marazon. *City of Troy v Ohlinger*, 438 Mich 477, 486; 475 NW2d 54 (1991).

With respect to plaintiffs' claims for assault and battery and intentional infliction of emotional distress, we find that there was no issue of fact and defendants were entitled to summary disposition. The trial court determined that plaintiffs were collaterally estopped from relitigating the validity of the warrant, but neglected to address whether the force used to execute the valid search warrant was reasonable and whether defendants' conduct was extreme and outrageous. We nevertheless review these issues because they present questions of law and we will affirm the trial court's decision if it reached the correct result, albeit for the wrong reason. *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 641; 506 NW2d 920 (1993); *Thomas v Leja*, 187 Mich App 418, 421; 468 NW2d 58 (1991). The force forming the basis of an assault and battery claim must be unlawful, *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991), and the conduct underlying an intentional infliction of emotional distress claim must be so outrageous and extreme as to go beyond the bounds of decency in a civilized community. *Doe v Mills*, 212 Mich App 73, 91; 536 NW2d 824 (1995). Defendants may use reasonable force both when detaining occupants of the premises to be searched pursuant to a valid warrant and in effectuating arrests. See *Summers, supra* at 705; *Tope, supra* at 106. Upon review of the record in this case, we find that reasonable minds could not differ on whether defendants' conduct was a reasonable use of force and whether it constituted extreme and outrageous conduct. *Wolfe v Employers Health Ins Co (On Remand)*, 194 Mich App 172, 175; 486 NW2d 319 (1992); *Doe, supra* at 91. The officers were executing a search warrant at the home of a suspected drug trafficker, and the violent nature of the drug trade necessitates that the officers take precautions to protect their safety. Hence, even accepting plaintiff's allegations as true, the pointing of guns at plaintiffs during the initial stages of the search and the handcuffing of Kenneth Marazon were entirely reasonable actions under the circumstances of this case. Accordingly, we conclude that the trial court properly granted defendants' motion for summary disposition with respect to all of plaintiffs' claims.

In light of our resolution of the preceding issues, we need not address whether the trial court properly granted defendants' motion for summary disposition on the basis of governmental immunity, but note that governmental immunity was applicable, see, e.g. *Bell v Fox*, 206 Mich App 522, 526; 522 NW2d 869 (1994); *lv den* 447 Mich 992 (1994).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Harold Hood

/s/ John J. McDonald

<sup>1</sup> Because plaintiffs' theory of liability with respect to defendants Monroe County, OMNI, the sheriff, and Officer Phillips is that they are vicariously liable for the torts of other officers, the discussion of this issue will address plaintiffs' allegations of conduct by defendant Galimberti and other officers who took part in the execution of the search warrant.