

SUPREME COURT OF THE STATE OF FLORIDA

JAMES THOMAS STAFFORD,
an individual, d/b/a METRO ONE
POLICE SUPPLY,

APPELLANT/DEFENDANT,

vs.

CASE NO.: SC06-608

DON REID FORD, INC.,

APPELLEE/PLAINTIFF.

APPELLANT'S JURISDICTIONAL BRIEF

On appeal from the Fifth District Court of Appeal
Appeal No.: 5D05-2413

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STATEMENT OF THE CASE AND FACTS

This appeal was brought from an Amended Final [Summary] Judgment entered in Orange County Circuit Court Case Number 2002CA-2907 by the Honorable Thomas Mihok on July 1, 2005, finding appellant/defendant JAMES THOMAS STAFFORD [hereinafter referred to as "STAFFORD"] liable to appellee/plaintiff DON REID FORD, INC. [hereinafter referred "DON REID"] for treble damages in the amount of \$675,000.00, pursuant to §772.11, Florida Statutes.

STAFFORD was charged in a two-count criminal information with grand theft from DON REID of more than \$100,000 and scheme to defraud to obtain \$50,000 or more from DON REID, between June 1, 1999 and September 7, 2001. STAFFORD entered into a plea agreement with the State, pursuant to which he agreed to plead *nolo contendere* to the single charge of scheme to defraud of \$50,000 or more in violation of §817.034(3)(a)(1), Florida Statutes. In exchange for a ten-year probationary sentence in lieu of a potential 30-year prison sentence, STAFFORD agreed to pay restitution to DON REID in the amount of \$225,000.

A change of plea hearing and sentencing was held before Orange County Circuit Court Judge Anthony H. Johnson on June 20, 2003. Judge Johnson refused to accept STAFFORD'S *nolo contendere* plea but, permitted STAFFORD to plead

“*guilty in his own best interest*” Although the State articulated a factual basis for STAFFORD’S plea, neither his plea agreement nor his in-court plea colloquy required STAFFORD to admit the factual basis of the State’s charges. Thus, STAFFORD neither admitted that DON REID suffered actual damages of \$225,000, nor stipulated to the factual basis for his plea recited by the State Attorney at the change of plea hearing.

In its motion for summary judgment in its subsequently filed civil case, DON REID sought a judgment that STAFFORD was liable for treble damages in the amount of \$753,281.19, or three times the amount of restitution STAFFORD was ordered to pay in the criminal case, on the theory that STAFFORD was collaterally estopped from denying or affirmatively defending against DON REID’S claim for damages for civil theft based on the criminal restitution order. STAFFORD challenged DON REID’S entitlement to summary judgment as to the amount of damages, relying on the authority of *Starr Tyme, Inc. v. Cohen*, 659 So.2d 1064 (Fla. 1995), the only Florida case on point.

After considering the parties’ legal arguments, Judge Mihok entered an order granting DON REID’S motion for summary judgment as to STAFFORD’S liability but, denying DON REID’S motion for summary judgment as to the amount of damages. That order also permitted DON REID leave to file further authority to

support its claim that STAFFORD should be estopped from denying that he caused DON REID to suffer damages in the amount of the restitution he agreed to pay, or \$225,000. On or about October 6, 2004, DON REID filed its NOTICE OF FURNISHING ADDITIONAL AUTHORITY IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AS TO DAMAGES, supplying the court with out-of-state case law authority. Then, on December 1, 2004, DON REID filed a RENEWED MOTION FOR SUMMARY JUDGMENT AS TO DAMAGES. Another hearing was held before Judge Mihok on March 28, 2005.

At the conclusion of that March 28, 2005 hearing, Judge Mihok reversed his prior decision on DON REID'S motion for summary judgment as to the amount of damages. The court said:

Okay, it seems to me that the problem with *Starr Tyme* was the fact that was a plea to a misdemeanor. And I think as I read the opinion ... the Court seems to be bothered by the fact that the maximum amount with regard to petit theft, a misdemeanor petit theft, the maximum allegation is \$300, that is there is a theft where the value of the property did not exceed \$300. And I think that's what gave the Court trouble there.

Also it was a nolo contendere plea which means the defendant was not disputing the evidence presented by the State, and the evidence presented by the State was that there would be a theft of property with a value of \$300 or less.

In our case there was a guilty plea where the amount of the restitution was determined by the trial judgment with the agreement of the

defendant at the time that the loss attributed to Mr. Stafford was \$225,000.

Had there been a dispute with regard to that, Mr. Stafford at that point would have been entitled to a separate restitution hearing whereby the State would be required to prove that the restitution attributable to him would be \$225,000. But there was an agreement by the parties at that time.

Based on all of that, I'm going to find in favor of the plaintiff here

Thereafter, the trial court entered a written ORDER GRANTING

SUMMARY FINAL JUDGMENT finding, *inter alia*:

2. Having considered the pleadings filed herein together with a transcript of Court proceedings in the criminal case arising from the same facts as the instant civil action, State of Florida v. James Thomas Stafford, Case no.: 48-2002-CF-578-0, Orange County Circuit Court, the Court finds that Defendant Stafford entered a guilty plea to a felony - to-wit, F.S. 772.11 and, attendant thereto, a judicial determination was made establishing a factual basis for actual compensatory damages in the amount of \$225,000 sustained by the Plaintiff DON REID FORD as a result of Defendant STAFFORD'S criminal conduct.

The court entered an Amended Final Judgment on July 1, 2005. STAFFORD then perfected his appeal to the Fifth District Court of Appeal. The Fifth District affirmed the trial court's order based on its determination that "*Starr Tyme* in fact supports the lower court's judgment because the restitution amount was within the monetary parameters of the crime." *Stafford v. Don Reid Ford, Inc.*, 920 So.2d 791, 794 (Fla. 5th DCA 2006). The Fifth District reasoned that "the quantum of

damages was actually adjudicated in the criminal proceeding as determined by the final judgment [T]he resolution of this issue was necessary to the proceeding because, by statute, the criminal court was required to determine these damages and order restitution. § 775.089(1)(a), Fla. Stat. (2005).” *Id.* at 793. The Supreme Court has jurisdiction over this appeal pursuant to Rule 9.030(a)(2)(A)(iv), Florida Rules of Appellate Procedure, because the Fifth District’s February 17, 2006 opinion is in direct conflict with the *Starr Tyme, Inc. v. Cohen*, 659 So.2d 1064 (Fla. 1995).

SUMMARY OF ARGUMENT

Both the trial court and the Fifth District erred in reinterpreting *Starr Tyme v. Cohen*, 659 So.2d 1064 (Fla. 1995), and finding STAFFORD liable to DON REID for treble damages based solely on the amount of restitution STAFFORD agreed to pay pursuant to a negotiated plea agreement.

ARGUMENT

In its original motion for summary judgment, DON REID argued that “[p]ursuant to §§775.89(8) and 772.14, Defendant Stafford is collaterally estopped from disputing the material facts of his criminal conviction which are now the same set of material facts that this civil suit is based upon.” STAFFORD conceded that he was estopped from defending against his liability but, argued that, in the

absence of any evidence demonstrating the amount of DON REID'S actual damages, the trial court could not enter summary judgment for DON REID for treble damages in an amount based solely on the restitution STAFFORD agreed to pay as part of his negotiated plea agreement.

In the only Florida case directly on point, *Starr Tyme v. Cohen*, 659 So.2d 1064, 1065 (Fla. 1995), this Court held:

... a defendant who is adjudicated guilty pursuant to a plea of nolo contendere is collaterally estopped from seeking affirmative relief or defending a civil theft claim that is based on the same conduct that gave rise to a prior prosecution. However, the defendant is estopped only as to matters that necessarily were decided in favor of the State in the prior proceeding. *What matters were actually decided in the prior proceeding is a question of fact that must be determined on a case-by-case basis. ...*

For our purposes, section 812.014 defines petit theft as the theft of property valued at less than \$300. Starr Tyme, therefore, was entitled to use section 772.14 to establish actual damages of \$299.99 in its civil theft claim. *However, Starr Tyme had the burden of proving actual damages in a greater amount by clear and convincing evidence and Cohen could defend against a greater claim. §772.11 (civil theft claim must be proven by clear and convincing evidence).*

Id. at 1068-1069 [emphasis added].

In a footnote, this Court explained that:

[e]ven if we were to consider the restitution order entered in the prior prosecution "a decree" under section 772.14, the result reached here would be the same. This is so because the facts underlying the criminal offense that gave rise to the restitution order will be given

collateral estoppel effect; not the restitution order itself. This is so because only those facts were judicially determined in connection with the nolo plea.... As part of his plea agreement, Cohen pleaded nolo to petit theft and agreed to pay restitution to Starr Tyme in the amount of \$3,000 in order to avoid the cost of a felony trial. *The \$3,000 figure was not litigated in the criminal proceeding nor was it a fact that necessarily had to be determined by the trial court before the court could accept Cohen's plea of nolo contendere ... Id.* at 1069 (emphasis added).

Thus, the legal issue presented in this appeal is whether the trial court and the Fifth District properly determined a disputed issue of fact in a summary judgment proceeding consistent with, or contrary to, this Court's express ruling in *Star Tyme* that "... *the facts underlying the criminal offense that gave rise to the restitution order will be given collateral estoppel effect; not the restitution order itself.*" The findings in its ORDER GRANTING SUMMARY FINAL JUDGMENT demonstrate that the trial court erroneously distinguished the facts of STAFFORD'S case from those confronting this Court in *Star Tyme* in order to arrive at the conclusion that DON REID was entitled to recover treble damages in the amount of \$675,000 from STAFFORD. On appeal, the Fifth District concluded that "*Starr Tyme* in fact supports the lower court's judgment because the restitution amount was within the monetary parameters of the crime." *Stafford v. Don Reid Ford, Inc.*, 920 So.2d 791, 794 (Fla. 5th DCA 2006). The Fifth District reasoned that "the quantum of damages was actually adjudicated in the criminal proceeding

as determined by the final judgment [T]he resolution of this issue was necessary to the proceeding because, by statute, the criminal court was required to determine these damages and order restitution. § 775.089(1)(a), Fla. State. (2005).”
Id. at 793

In *Star Tyme*, however, this Court unambiguously held that “... *the facts underlying the criminal offense that gave rise to the restitution order will be given collateral estoppel effect; not the restitution order itself.*” The criminal restitution order that was entered against STAFFORD in his criminal case was not proof of DON REID’S actual damages. Like the restitution order examined in *Star Tyme*, the restitution order at issue in STAFFORD’S case was the product of a negotiated agreement that permitted STAFFORD to avoid a potential prison sentence. That order could not be given collateral estoppel effect to relieve DON REID of its burden of proof in its civil case because STAFFORD never admitted that DON REID suffered actual damages of \$225,000. Inasmuch as DON REID failed to proffer any other evidence of its actual damages, DON REID was not entitled to summary judgment finding STAFFORD liable for treble damages in the amount of \$675,000.

CONCLUSION

Both the trial court and the Fifth District erroneously interpreted and misapplied *Star Tyme* to the facts of this case. This Court must reject those courts' reasoning that the amount of loss Stafford's crime caused DON REID to suffer was actually adjudicated in the criminal case. This Court did not recognize such a principle in *Star Tyme*. Rather, the Court directed that the collateral estoppel effect of the facts necessarily decided in a criminal case be determined by a case-by-case examination of the actual facts litigated in a criminal proceeding. Therefore, this Court must reject the Fifth District's affirmation of the trial court's AMENDED FINAL JUDGMENT with directions that the trial court vacate both the AMENDED FINAL JUDGMENT and the ORDER GRANTING SUMMARY FINAL JUDGMENT finding STAFFORD liable to DON REID for treble damages in the amount of \$675,000.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing brief was provided, by U.S. Mail, postage prepaid, to Arthur J. Ranson, III, Esquire Shuffield Lowman, Gateway Center, 1000 Legion Place, Suite 1700, Orlando, FL 32801, and an electronic copy was transmitted to the Court via e-mail to e-file@flcourts.org on this 29th day of April, 2006.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief has been produced in compliance with the requirements of Rule 9.210(a)(2), Fla.R. App.P., in 14 pt. Times New Roman font.

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APPENDIX