

STATE OF MICHIGAN
COURT OF APPEALS

ESTHER M. HOLM, Trustee of ESTHER M.
HOLM TRUST,

UNPUBLISHED
December 17, 1999

Plaintiff-Appellant,

v

No. 212579
Grand Traverse Circuit Court
LC No. 97-016577 CH

JOHN W. CAMPBELL, SITE PLANNING
DEVELOPMENT, INC., and NORTHWEST
DESIGN GROUP,

Defendants-Appellees.

Before: Bandstra, C.J., and Markman and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants pursuant to MCR 2.116(C)(7) and (8). We affirm.

Plaintiff first argues that the trial court erred in ruling that her action was barred by res judicata. The trial court's grant of summary disposition pursuant to MCR 2.116(C)(7), based on res judicata, is reviewed de novo to determine whether the moving party was entitled to judgment as a matter of law. *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998); *Huron Tool & Engineering Co v Precision Consulting Services, Inc*, 209 Mich App 365, 376-377; 532 NW2d 541 (1995). We are satisfied that the trial court did not err when it ruled that res judicata barred plaintiff's claims.¹

Due process requires only one day in court, not a series of days. *Johnson v Haley*, 357 Mich 411, 415; 98 NW2d 555 (1959). The doctrine of res judicata is invoked to ensure that litigation has an end. *Bergeron v Busch*, 228 Mich App 618, 621; 579 NW2d 124 (1998). For res judicata to apply, defendants must establish the following: (1) the former suit was decided on the merits, (2) the issues in the second action were or could have been resolved in the former action, and (3) both actions involved

the same parties or their privies. *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997).

Plaintiff's settlement and stipulated dismissal with prejudice of her earlier action against the land developer is an adjudication on the merits for res judicata purposes. *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 395-396; 573 NW2d 336 (1997); *Brownridge v Michigan Mutual Ins Co*, 115 Mich App 745, 748; 321 NW2d 798 (1982). Therefore, the first requirement for the application of res judicata is met.

The second requirement for the application of res judicata is that the issues were, or could have been, raised in the earlier action. *Snider v Dunn*, 33 Mich App 619, 623; 190 NW2d 299 (1971). The test for determining whether two claims are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two claims. *Schwartz v City of Flint*, 187 Mich App 191, 194-195; 466 NW2d 357 (1991). Plaintiff's prior lawsuit arose out of the alleged fraudulent actions of the land developer that caused her to sell an easement that affected her driveway. While in the earlier action, plaintiff sought the return of her driveway, and in this action, plaintiff sought damages and her litigation expenses, both actions arise out of the same core facts. A cursory examination of the two complaints demonstrates that both actions arose out of the same wrongful acts and misrepresentations.

The third requirement for res judicata mandates that the action involve the same parties or their privies. One party is in privity with another when the second party is so identified in interest with another that he or she represents the same legal right. *Phinisee, supra* at 554, quoting *Sloan v Madison Heights*, 425 Mich 288, 295-296; 389 NW2d 418 (1986); *Viele v DCMA*, 167 Mich App 571, 579-580; 423 NW2d 270, modified in part on other grounds 431 Mich 898; 432 NW2d 171 (1988). Examples include the relationship of principal and agent, master and servant, or indemnitor and indemnitee. *Viele, supra* at 580.

In the instant case, these defendants were contractually linked to the land developer. Assuming, arguendo, that they made misrepresentations to plaintiff regarding the effect the drainfield would have on her driveway, these statements were made in furtherance of their contractual obligations to the developer. Not even plaintiff suggests that defendants' allegedly wrongful acts were done for their own purposes. See *Krolik v Curry*, 148 Mich 214, 222; 111 NW 761 (1907).

Plaintiff argues that res judicata should not apply because she did not allegedly know that these defendants were instrumental in obtaining the easement from her until well into the first action. This claim is without merit. *Perry & Derrick Co, Inc v King*, 24 Mich App 616, 619-620; 180 NW2d 483 (1970). We therefore conclude that the trial court did not err in ruling that res judicata barred plaintiff's action because the earlier suit against defendants' principals was decided on the merits, the issues of this suit were resolved in that earlier action and defendants are privies of the developer.

Next, plaintiff argues that the trial court improperly granted summary disposition to defendants Campbell and Site Planning, and improperly permitted their counsel to speak at defendant Northwest's motion hearing, because Campbell and Site Planning did not file independent motions for summary

disposition. We disagree. A trial court's decisions regarding motion hearing proceedings are reviewed for an abuse of discretion. MCR 2.119(E)(3); *Bancorp Group, Inc v Michigan Conference of Teamsters Welfare Fund*, 231 Mich App 163, 169; 585 NW2d 777 (1998), lv gtd on other grounds ___ Mich ___ (9/29/99). The trial court did not abuse its discretion in permitting counsel for Campbell and Site Planning to speak at Northwest's motion hearing. Further, even if the trial court abused its discretion in allowing counsel to speak, the error was harmless because the court neither cited nor relied on counsel's statements in its ruling on summary disposition.

Further, MCR 2.116(I)(1) provides that "[i]f the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." In this case, the trial court granted summary disposition to Campbell and Site Planning on the same basis as Northwest, even though Campbell and Site Planning had not filed their own motions for summary disposition. The court's action was permissible under MCR 2.116(I)(1). In addition, because Campbell and Site Planning stood in the same position as Northwest – all were agents of the developer – it would be a waste of judicial resources to require Campbell and Site Planning to file and argue their own motions for summary disposition, and for the trial court to issue another ruling on res judicata grounds.

Next, plaintiff argues that the trial court improperly granted Campbell and Site Planning summary disposition pursuant to their affirmative defenses. We need not address this issue in light of the trial court's grant of summary disposition on the ground of res judicata.

Finally, plaintiff argues that public policy mandates that res judicata not bar her action against licensed professionals. Plaintiff offers no cases that support her claim that public policy would be best served by excepting her action from the provisions of res judicata, and we therefore decline to address the issue. *Koron v Melendy*, 207 Mich App 188, 193; 523 NW2d 870 (1994).

We affirm.

/s/ Richard A. Bandstra

/s/ Patrick M. Meter

Judge Markman did not participate.

¹ We conclude that this matter was properly considered under res judicata (claim preclusion) principles and find plaintiff's arguments about the unavailability of collateral estoppel (issue preclusion) to be inapposite.