

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

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CINDY L. CAMERON,

Plaintiff-Appellee,

v

STATE OF MICHIGAN, MICHIGAN SUPREME  
COURT, STATE COURT ADMINISTRATIVE  
OFFICE and MICHIGAN STATE TREASURER,

Defendants-Appellants,

and

COUNTY OF MONROE,

Defendant-Appellee.

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UNPUBLISHED

March 3, 2000

No. 207829

Monroe Circuit Court

LC Nos. 96-005125-CZ

96-016026-CM

Before: Wilder, P.J., and Bandstra and Cavanagh, JJ.

PER CURIAM.

Defendants-appellants State of Michigan, Michigan Supreme Court, State Court Administrative Office (SCAO), and Michigan State Treasurer (“the State defendants”) appeal an order of the lower court granting summary disposition against them and ruling that they were liable as indemnitors of former Judge James Seitz, with respect to injuries he caused plaintiff when she was employed at the Monroe County Probate Court about a decade ago. Because we conclude that the terms of the indemnity agreement were not satisfied by Seitz, we reverse in part and affirm in part.

This is what we hope will be the last installment in a long line of intertwined federal and state litigation resulting from plaintiff’s employment with Seitz. Without detailing that history, suffice it to say that this is the second indemnity action plaintiff has filed against the State defendants. The first action sought to have the State defendants pay damages owed by Seitz as the result of a federal action. In that first indemnity action, Judge Giddings issued a ruling that the indemnity agreement relied upon here applied and that the State defendants were liable. The State defendants appealed that ruling. However,

during the pendency of that appeal, the underlying federal decision was reversed by the Sixth Circuit Court of Appeals; as a result, the appeal was voluntarily dismissed.

After the Sixth Circuit remanded the case, the Federal District Court declined to exercise jurisdiction over the one remaining state claim against Seitz. Plaintiff brought that claim anew in the Monroe County Circuit Court (“the Monroe County action”). The claim was mediated for \$40,000, which both parties accepted. Plaintiff filed the present case in the Court of Claims, claiming that the State defendants are liable to make payment of this amount on behalf of Seitz under the terms of the indemnification agreement. The lower court granted summary disposition in plaintiff’s favor.

The State defendants first argue that the lower court erred in granting summary disposition against them after improperly concluding that, under principles of collateral estoppel, Judge Giddings’ ruling regarding the applicability of the indemnification agreement in the first indemnification action was binding. We agree. Decisions regarding motions for summary disposition and the applicability of collateral estoppel are questions of law that we review de novo. *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998); *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996). The doctrine of collateral estoppel applies to preclude relitigation of an issue in a subsequent case only when the identical issue was raised in the previous case and the parties against which the doctrine would apply had a full and fair opportunity to be heard. *Dearborn Heights School Dist No 7 v Wayne Co MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998); *McMichael, supra*. Neither of these conditions are satisfied here.

The issue before Judge Giddings in the first indemnity action was whether the indemnification agreement applied with respect to litigation wherein Seitz had requested and received representation by the Attorney General. As discussed below, that is not the case in this action. Further, the State defendants claim in this case that Seitz’ actions against plaintiff were not taken “within his judicial authority” as required by the indemnification agreement. It is not clear whether this issue was considered by Judge Giddings in the first indemnity action. Although his opinion there does not directly address this issue, arguably implicit in his conclusion that the indemnification agreement applied is the conclusion that the “judicial authority” language of the indemnity agreement was satisfied. In any event, considering the fact that the appeal of Judge Giddings’ ruling in the first indemnity action was voluntarily and reasonably dismissed by the State defendants when the underlying federal damage award was reversed, we do not conclude that the State defendants had the required full and fair opportunity to have this issue litigated in the first action. *Id.*

Having concluded that collateral estoppel was inapplicable here, we further conclude on the merits that, under the facts of this case, the indemnification agreement does not apply. In pertinent part, the language of the indemnification agreement states that “[w]henever . . . a civil action [is] commenced by any party . . . against any judge . . . for any action within his/her judicial authority . . . , the Attorney General shall[,] upon the judge’s request to the State Court Administrator and the State Court Administrator’s request to the Attorney General, appear for an[d] represent the judge. . . .” The agreement further states that the State Court Administrator shall pay damages resulting from such an action but only as to “a final judgment . . . [that] has been awarded against a judge who has, through the State Court Administrator, asked the Attorney General to defend him/her . . . .” In other words,

indemnification is only afforded a judge who affords the SCAO the opportunity to have the Attorney General step in to provide a defense against possible liability.

It is not sufficient, as plaintiff would argue, that the Attorney General was on notice regarding the Monroe County action. That notice provided the Attorney General no opportunity to provide a defense of Seitz, who had apparently retained his own counsel. Further, plaintiff's argument that the Monroe County action was simply a "continuation" of the federal action, meaning that Seitz had no obligation to seek Attorney General representation anew, flies in the face of the agreements' imposition of an obligation upon a judge to request representation "[w]henever . . . a civil action [is] commenced." Plain and simple, the Monroe County action was a new action commenced by plaintiff after her federal case had been dismissed.

Finally, there is nothing in the language of the agreement suggesting that a judge is obliged to seek Attorney General representation only if it would not be futile to do so. Even if that exception somehow might be read into the agreement, we cannot conclude that Seitz' request of the Attorney General to provide representation in the Monroe County action would have necessarily been denied. The Attorney General had provided Seitz representation in the federal action and only terminated representation when Seitz filed notice of an intent to sue various state entities with respect to a judicial tenure proceeding. That issue was long resolved by the time the Monroe County action was filed in 1995; Seitz had been removed from his judicial office by our Supreme Court already in 1993. It is certainly not clear that the Attorney General would have had any continuing conflict in representing Seitz following the termination of the judicial grievance matter.

When Seitz accepted the mediation award in the Monroe County action, he did so without the counsel or assistance of the Attorney General. For the foregoing reasons, the State defendants cannot now be held liable for payment of the award that Seitz and his retained counsel accepted.<sup>1</sup>

We further note that, in her brief on appeal, plaintiff argues that we should consider whether defendant-appellee County of Monroe, rather than the State defendants, should provide indemnification for the mediation award. However, as defendant-appellee County of Monroe points out, plaintiff did not file a cross-appeal challenging the lower court's decision to grant the County of Monroe's motion for summary disposition and its determination that the County of Monroe is not liable. Accordingly, this issue has not been preserved for appeal, and we will not consider it.

We reverse the order of the lower court granting plaintiff's motion for summary disposition with respect to the State defendants and determining that the State defendants are liable to plaintiff for payment of the mediation award. We further reverse the lower court's denial of the State defendants' motion for summary disposition and remand to the trial court for an order

to be entered granting summary disposition to the State defendants. In all other respects, we affirm. We do not retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Richard A. Bandstra

<sup>1</sup> Having concluded that the indemnification agreement did not apply here for these reasons, we need not further consider whether Seitz' actions against plaintiff were "within his . . . judicial authority" as required by the agreement.