

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

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MERRIANNE WEBERG, DOUGLAS WILFRED  
WEBERG, DOUGLAS EDWARD WEBERG,  
DARRELL JAMES WEBERG and BRANDON  
GEORGE WEBERG,

UNPUBLISHED  
February 2, 2001

Plaintiffs-Appellants,

v

RANDY FRANKS, MARK SIMONS and  
KENNY ROBINSON,

No. 218043  
Wayne Circuit Court  
LC No. 98-813245-NO

Defendants-Appellees.

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Before: Collins, P.J., and Doctoroff and White, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting defendants' motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is the third case that plaintiffs have filed alleging that Merrienne Weberg, a white female and former employee of the Michigan Department of Corrections (DOC), was discriminated against on the basis of her race during the course of her employment, and constructively discharged. Plaintiffs previously filed suit in the United States District Court for the Eastern District of Michigan, naming among the defendants DOC employees Franks and Robinson, and in the Court of Claims, naming as defendants the State of Michigan and the DOC. The federal suit was dismissed; however, that decision has since been reversed. The Court of Claims granted summary disposition of some claims pursuant to MCR 2.116(C)(10), and granted summary disposition of plaintiffs' claims of intentional discrimination in violation of the Elliott-Larsen Civil Rights Act (ELCRA), MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.*, and loss of consortium on the ground that they were precluded by collateral estoppel because they had been alleged in the dismissed federal action.

This suit alleged disparate treatment racial discrimination, disparate impact racial discrimination, intentional racial discrimination, hostile work environment based on race, and retaliation, all in violation of the ELCRA, ethnic intimidation in violation of MCL 750.147b;

MSA 28.344(2), and loss of consortium. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiffs' claims were barred by collateral estoppel because they mirrored the claims raised in the case dismissed by the Court of Claims. The trial court granted the motion.

Plaintiffs argue that the trial court erred by granting defendants' motion for summary disposition. We review a trial court's decision on a motion for summary disposition de novo. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997). Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid, final judgment and the issue was actually and necessarily determined in the prior proceeding. *Dearborn Heights School Dist No 7 v Wayne County MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). As a general rule, mutuality of estoppel is a necessary element of collateral estoppel. *Barrow v Pritchard*, 235 Mich App 478, 480-481; 597 NW2d 853 (1999). Estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it had it gone against him. *Id.*

Plaintiffs assert that at a minimum, the claim of hostile work environment cannot be precluded by collateral estoppel because it was not alleged in the federal action or actually litigated in the Court of Claims. We disagree. The trial court's conclusion that plaintiffs' claims were barred by collateral estoppel was based on the nature of the claims asserted in their final resolution in the Court of Claims, not in the federal action as plaintiffs allege. The Court of Claims granted summary disposition of plaintiffs' hostile work environment claim pursuant to MCR 2.116(C)(10). The fact that the elements of a claim of racial discrimination, like that alleged in the federal action, differ from the elements of a claim of hostile work environment, like that asserted in the Court of Claims action, does not mandate a conclusion that the trial court in the instant case erred by granting defendants' motion for summary disposition based on collateral estoppel. The Court of Claims' dismissal of the hostile work environment claim via summary disposition constituted a decision on the merits for purposes of application of collateral estoppel. *Detroit v Qualls*, 434 Mich 340, 356 n 27; 454 NW2d 374 (1990).

An exception to the mutuality requirement provides that collateral estoppel can be raised in a defensive manner by a defendant in a subsequent action if that defendant and the defendant in the previous action had a special relationship, the culpability of one of the parties is premised on the liability of the other party, and one of the two parties was exonerated in the previous action. *Bigelow v Old Dominion Copper Mining & Smelting Co*, 225 US 111, 127-128; 32 S Ct 641; 56 L Ed 1009 (1912); *Couch v Schultz*, 176 Mich App 167, 169-173; 439 NW2d 296 (1989); *Braxton v Litchalk*, 55 Mich App 708, 720-721; 223 NW2d 316 (1974). The individual defendants in the instant action have a special relationship with the DOC, a defendant in the Court of Claims action, in that they are employees of the DOC. The exoneration of the defendants in the Court of Claims action was based on the conclusion that no question of fact existed as to whether their employees engaged in actions for which the defendants could be held

liable. Thus, the liability of the defendants in the instant case was necessarily determined in the Court of Claims case. *Bigelow, supra*, *Couch, supra*, and *Braxton, supra*, support the application of collateral estoppel in this case.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Martin M. Doctoroff

/s/ Helene N. White