

STATE OF MICHIGAN
COURT OF APPEALS

REDHA ALMANSORI,

Plaintiff-Appellant,

v

JOHN WESTON,

Defendant-Appellee.

UNPUBLISHED

July 10, 2001

No. 223073

Wayne Circuit Court

LC No. 98-826992-NI

Before: Saad, P.J., and Holbrook, Jr., and Murphy, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant's motion for summary disposition on res judicata grounds. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was involved in an automobile accident with defendant. Plaintiff's negligence action was dismissed without prejudice when plaintiff failed to appear for a settlement conference. Plaintiff moved to reinstate the action. That motion was rescheduled to coincide with another settlement conference. Plaintiff again failed to appear, and the trial court denied the motion to reinstate.

Plaintiff filed this identical action, and defendant moved for summary disposition asserting that this action was barred by the dismissal of the prior action and the doctrine of res judicata. The trial court granted the motion, finding that its order denying reinstatement of the previous action operated as a decision on the merits.

For res judicata to apply, the prior action must have been decided on the merits, the issues raised in the second case must have been resolved in the first, and both actions must have involved the same parties or their privies. *Limbach v Oakland Co Bd of Road Commr's*, 226 Mich App 389; 389 NW2d 336 (1997). Plaintiff's prior action was dismissed for failure to comply with the court order that plaintiff appear for the settlement conference. MCR 2.401(G)(1). Unless the court otherwise specifies in its order, a dismissal under this subrule operates as an adjudication on the merits. MCR 2.504(B)(3). While the original dismissal of the action was without prejudice, the trial court found that the order denying reconsideration was with prejudice. Where nothing in the order indicated otherwise, the dismissal operated as an adjudication on the merits, and supported the application of res judicata.

The propriety of the dismissal in a previous case is not before this Court where plaintiff did not appeal from an order in that case. Defendant properly raised the application of res judicata in his affirmative defense, and his motion for summary disposition was timely. MCR 2.116(D).

Affirmed.

/s/ Henry William Saad

/s/ Donald E. Holbrook, Jr.

/s/ William B. Murphy