

STATE OF MICHIGAN
COURT OF APPEALS

CHERYL COCKRELL,

Plaintiff-Appellee,

v

CITIZENS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

July 13, 2001

No. 223527

Oakland Circuit Court

LC No. 98-010325-CZ

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

PER CURIAM.

Defendant appeals as of right from a circuit court order granting plaintiff's motion for summary disposition and denying defendant's motion for summary disposition pursuant to MCR 2.116(C)(7) and (10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sued defendant, seeking uninsured motorist benefits for injuries sustained in an accident caused by a rental car which was being operated by a driver who did not have the lessor's or lessee's consent. The trial court ruled as a matter of law that the rental car was not an uninsured vehicle as defined in defendant's policy and granted summary disposition for defendant. Plaintiff then filed this action, seeking coverage under a different theory of liability. The trial court ruled that the second action was not barred by the doctrine of res judicata and entered judgment in plaintiff's favor.

"As a general rule, res judicata will apply to bar a subsequent relitigation based upon the same transaction or events" *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The doctrine "bars relitigation of claims actually litigated and those claims arising out of the same transaction that could have been litigated." *Huggett v Dep't of Natural Resources*, 232 Mich App 188, 197; 590 NW2d 747 (1998), lv gtd 463 Mich 910 (2000). "For the doctrine to apply (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies." *Energy Reserves, Inc v Consumers Power Co*, 221 Mich App 210, 215-216; 561 NW2d 854 (1997). "Because res judicata is a question of law, we review de novo its application as well as the court's action on a motion for summary disposition." *Phinisee v Rogers*, 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

The first element has been met. “A summary judgment is a judgment on the merits which bars relitigation on the basis of res judicata.” *Roberts v City of Troy*, 170 Mich App 567, 577; 429 NW2d 206 (1988). Regarding the second element, the first action involved a claim for uninsured motorist benefits. The dispute centered on whether the rental car was an uninsured vehicle as that term was defined in defendant’s policy. The second action also involved a claim for uninsured motorist benefits but based on a different theory. However, “[t]he test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two actions. A comparison of the grounds asserted for relief is not a proper test.” *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 401; 509 NW2d 829 (1993) (citations omitted). Because the same core of facts was necessary to sustain both actions and the second action sought coverage for the same injuries incurred in the same accident at issue in the first action, the second element has been met even though the two actions were predicated on different theories of liability. *York v Wayne Co Sheriff*, 157 Mich App 417, 423-424; 403 NW2d 152 (1987). See also 1 Restatement Judgments, 2d, § 24, p 200, § 25, pp 212-213. Finally, the third element has been met, both actions involving complete identity of parties. Therefore, the trial court erred in denying defendant’s motion for summary disposition.

Reversed.

/s/ Henry William Saad
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy