

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL YOUNG,

Plaintiff-Appellant,

v

DAIMLER CHRYSLER,

Defendant-Appellee.

UNPUBLISHED

November 26, 2002

No. 235631

Oakland Circuit Court

LC No. 01-029103-CZ

Before: Markey, P.J., and Saad and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by right a circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff sued defendant in federal court alleging state and federal employment discrimination claims. The court dismissed the state law claims without prejudice. It later dismissed the federal law claims, ruling in part that plaintiff's age discrimination claim was barred by the statute of limitations. Plaintiff then filed this action, alleging his state law claims. Defendant moved to dismiss, asserting that under the doctrine of collateral estoppel, the federal court's ruling with regard to the statute of limitations issue was conclusive. Thus, plaintiff's state law claims were time barred as well.

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000). Whether a cause of action is barred by the statute of limitations is a question of law that is also reviewed de novo. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997). Likewise, the applicability of collateral estoppel is a question of law that is reviewed de novo. *McMichael v McMichael*, 217 Mich App 723, 727; 552 NW2d 688 (1996).

"Collateral estoppel, or issue preclusion, precludes 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." *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001); see, also, *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995). "An issue is necessarily determined only if it is 'essential' to the judgment." *People v Gates*, 434

Mich 146, 158; 452 NW2d 627 (1990), citing 1 Restatement Judgments, 2d § 27, p 250, comment h, p 258.

The federal action was between the same parties. That action was resolved by summary disposition, which constitutes a decision on the merits. *Detroit v Qualls*, 434 Mich 340, 356-359; 454 NW2d 374 (1990). In the context of resolving the timeliness of plaintiff's federal age discrimination claim, the court was required to determine when that claim accrued. That issue was essential to the resolution of defendant's statute of limitations defense, so the issue was necessarily determined. Because the same issue affected defendant's statute of limitations defense to plaintiff's state law claims, the trial court did not err by applying that collateral estoppel.

An action under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, must be brought within three years after it first accrued. MCL 600.5805(1), (9); *Womack-Scott v Dep't of Corrections*, 246 Mich App 70, 74; 630 NW2d 650 (2001). Because the federal court determined that plaintiff's claims accrued in July 1996, he had until July 1999 to file suit. Plaintiff filed suit in federal court in May 1999, at which time approximately two months remained in the limitations period. Pursuant to MCL 600.5856, the limitations period is tolled "during the pendency of a prior suit between the parties where the prior action was not adjudicated on the merits." *Sherrell v Bugaski*, 169 Mich App 10, 17; 425 NW2d 707 (1988). A dismissal without prejudice is not an adjudication on the merits. *Yeo v State Farm Fire & Cas Ins Co*, 242 Mich App 483, 484; 618 NW2d 916 (2000). A prior action in the federal court tolls the limitations period as to any pendant state law claims alleged in the complaint. *Lee v Grand Rapids Bd of Ed*, 148 Mich App 364, 369-370; 384 NW2d 165 (1986); *Annabel v C J Link Lumber Co*, 115 Mich App 116, 121; 320 NW2d 64 (1982), *rev'd in part on other grounds* 417 Mich 950 (1983).

Therefore, the limitations period was tolled from May 1999 when plaintiff filed the federal action until July 1999 when the federal court dismissed the state law claims without prejudice. The limitations period began to run again in July 1999 and expired in September 1999. Plaintiff's complaint, which was filed in January 2001, was not timely. Therefore, the trial court did not err in concluding that the statute of limitations barred plaintiff's complaint.

We affirm.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Michael R. Smolenski