

STATE OF MICHIGAN
COURT OF APPEALS

STEFAN OLARU,

Plaintiff-Appellant,

v

FEDEX CUSTOM CRITICAL, INC., f/k/a
CALIBRE SYSTEMS, INC.,

Defendant-Appellee.

UNPUBLISHED

October 14, 2004

No. 248190

Oakland Circuit Court

LC No. 2002-045043-NF

Before: Griffin, P.J., and Saad and O'Connell, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, claims an appeal from the trial court's 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, a driver for defendant, was involved in an accident in Tennessee. He filed suit in Tennessee, naming the driver of the other vehicle and his employer as defendants. He alleged that he suffered injuries as a result of the other driver's negligence, and that defendant's refusal to pay him personal injury protection (PIP) benefits constituted a breach of contract. The jury returned a verdict of no cause of action, and the judgment was affirmed on appeal.

Plaintiff filed the instant suit, alleging that defendant's failure to pay PIP benefits constituted a breach of contract. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff's claim was barred by the doctrine of res judicata because his entitlement to PIP benefits was litigated and rejected in the Tennessee action, which was entitled to full faith and credit. US Const, art IV, § 1. The trial court granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to the facts or evidence in a prior action. *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second action was or could have been resolved in the first action; and (4) both actions involved the same parties or their privies. *Kosiel v Arrow Liquors Corp*, 446 Mich 374,

379; 521 NW2d 531 (1994). We review the applicability of the doctrine of res judicata de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

Plaintiff's breach of contract claim was litigated in the Tennessee action. The jury concluded that plaintiff was not entitled to PIP benefits. The Tennessee action was decided on the merits, the decree entered in that action constituted a final decision, plaintiff's breach of contract claim was litigated in that action, and that action and the instant matter involved the same parties. *Kosiel, supra*. Plaintiff's action was barred by the doctrine of res judicata. The trial court properly granted summary disposition in favor of defendant. *Id.*

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell