STATE OF MICHIGAN

COURT OF APPEALS

ANREE HEALTHCARE INC. d/b/a DETROIT PHYSICAL THERAPY AND REHABILITATION CENTER, Plaintiff-Appellant,	UNPUBLISHED November 9, 2010
v	No. 294081 Wayne Circuit Court
FARM BUREAU INSURANCE COMPANY, Defendant-Appellee.	LC No. 09-011644-NF

Before: BECKERING, P.J., and JANSEN and TALBOT, JJ.

PER CURIAM.

Anree Healthcare Inc, d/b/a Detroit Physical Therapy and Rehabilitation Center (Detroit Physical Therapy), appeals the trial court's order granting summary disposition in favor of defendant, Farm Bureau Insurance Company (Farm Bureau) resulting in the dismissal of its claim for payment for medical services. We affirm.

Sarleatha Stove was injured in an automobile accident on March 20, 2005. Farm Bureau was assigned Stove's claim for no-fault benefits by the Michigan Assigned Claims Facility. Detroit Physical Therapy provided Stove medical and rehabilitative services totaling $29,470 from December 17, 2007, through April 26, 2008. At some point, Detroit Physical Therapy and/or Stove submitted claims for payment of medical expenses incurred by Stove to Farm Bureau. Farm Bureau apparently refused to pay the claims. Stove filed an action against Farm Bureau on February 26, 2008, seeking recovery of no-fault benefits. Detroit Physical Therapy was not a party to this action. Stove's claim was voluntarily dismissed with prejudice on April 28, 2009, after she and Farm Bureau accepted the case evaluation award of $15,000 and settled the case. As part of the settlement agreement, Stove signed a "Release of Claims for No-Fault Benefits" stating that she agreed to release and discharge Farm Bureau "from any and all claims, actions, demands or causes of action, for injuries, losses or damages, . . . arising out of the alleged personal injuries to" Stove in the March 20, 2005 accident, to release Farm Bureau from all no-fault benefits claimed including medical and rehabilitation benefits, to "fully discharge" Farm Bureau's contractual and statutory obligations with respect to the accident, and that the settlement constituted "a full and final settlement" precluding Stove from "ever seeking no-fault benefits again incurred prior to February 10, 2009." On May 15, 2009, Detroit Physical Therapy commenced an action seeking recovery of no-fault benefits for the expenses it incurred in treating Stove. Farm Bureau sought summary disposition of Detroit Physical Therapy's claim

asserting it was barred by res judicata and the one-year-back rule.[1] The trial court granted summary disposition in favor of Farm Bureau and dismissed Detroit Physical Therapy's action with prejudice. This appeal ensued.

"A trial court's order granting summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo 'to determine whether the moving party was entitled to judgment as a matter of law.'"[2] "In determining whether a party is entitled to judgment as a matter of law pursuant to MCR 2.116(C)(7), a court must accept as true a plaintiff's well-pleaded factual allegations, affidavits, or other documentary evidence and construe them in the plaintiff's favor."[3] We review the applicability of res judicata de novo.[4]

"Res judicata bars a subsequent action between the same parties when the facts or evidence essential to the action are identical to those essential to a prior action."[5] Res judicata applies "when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies."[6]

We find that the first two requirements for res judicata were established. The voluntary dismissal of Stove's earlier action against Farm Bureau constitutes a decision on the merits for the invocation of res judicata.[7] Because Detroit Physical Therapy's action presented the identical issue and arose out of the same facts as Stove's earlier litigation, the matter contested in Detroit Physical Therapy's action was or could have been resolved in Stove's earlier action.[8]

---

[1] MCL 500.3145(1).

[2] *Hall v Small*, 267 Mich App 330, 333; 705 NW2d 741 (2005), quoting *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

[3] *Bronson Methodist Hosp v Allstate Ins Co*, 286 Mich App 219, 222; 779 NW2d 304 (2009).

[4] *Pierson Sand & Gravel, Inc v Keller Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

[5] *Chestonia Twp v Star Twp*, 266 Mich App 423, 429; 702 NW2d 631 (2005), citing *Sewell v Clean Cut Mgt*, 463 Mich 569, 575; 621 NW2d 222 (2001).

[6] *Id.* at 575; *Limbach v Oakland Co Rd Comm*, 226 Mich App 389, 395; 573 NW2d 336 (1997).

[7] *Id.* at 395 ("a voluntary dismissal with prejudice acts as an adjudication on the merits for res judicata"); see also *Schwartz v Flint*, 187 Mich App 191, 194; 466 NW2d 357 (1991) (res judicata applies to settlements and consent judgments). We disagree with Detroit Physical Therapy's argument that, pursuant to *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 283-284; 769 NW2d 234 (2009), a stipulation for dismissal based on a settlement does not constitute an adjudication on the merits because *Froling* is clearly distinguishable from the instant case and we do not find it persuasive.

[8] *Sewell*, 463 Mich at 575; *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 11; 672 NW2d 351 (2003) ("If the same facts or evidence would sustain both, the two actions are the same for the purpose of res judicata.")

But we fail to find that Stove and Detroit Physical Therapy were in privity.[9] This Court has explained:

> Regarding private parties, a privy includes a person so identified in interest with another that he represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee. A privy includes one who, after rendition of the judgment, has acquired an interest in the subject matter affected by the judgment through one of the parties, as by inheritance, succession or purchase. In order to find privity to exist between a party and non-party, Michigan courts require "both a substantial identity of interests and a working or functional relationship . . . in which the interests of the non-party are presented and protected by the party in the litigation."[10]

We agree that Stove, as the insured, and Detroit Physical Therapy, as her health care provider, had substantially identical interests in the recovery of no-fault benefits from Farm Bureau for the medical services rendered to Stove. But viewing the evidence in the light most favorable to Detroit Physical Therapy[11], we fail to find "a working or functional relationship . . . in which the interests of the non-party [were] presented and protected by the party in the litigation."[12] Although Stove necessarily presented and protected, to an extent, Detroit Physical Therapy's interests by seeking to recover the maximum amount of benefits,[13] it is also apparent by the outcome of the litigation that Stove litigated only her own interests. There is no indication that Stove agreed to assign the benefits she recovered from Farm Bureau in the earlier litigation to Detroit Physical Therapy for the cost of services provided. Stove also agreed to release Farm Bureau from any and all claims relating to the accident, thereby potentially limiting Detroit Physical Therapy's ability to recover further benefits. There was no evidence that Detroit Physical Therapy actively participated in Stove's litigation such that it had control over the presentation of the issues or even that it had notice of Stove's litigation. Under these circumstances, we cannot conclude that Stove and Detroit Physical Therapy had a "functional relationship" in which Stove presented and protected Detroit Physical Therapy's interests.[14] Because Detroit Physical Therapy was not in privity with Stove, res judicata could not operate to bar Detroit Physical Therapy's action.[15]

---

[9] *Sewell*, 463 Mich at 575.

[10] *Peterson*, 259 Mich App at 12-13 (quotations and citations omitted).

[11] *Bronson*, 286 Mich App at 222-223

[12] *Peterson*, 259 Mich App at 13.

[13] During the case evaluation in Stove's earlier action, she apparently presented Detroit Physical Therapy's invoices to support her claim for no-fault benefits.

[14] *Peterson*, 259 Mich App at 13.

[15] *Sewell*, 463 Mich at 575.

This does not end our analysis as we find that Detroit Physical Therapy's action was barred by the one-year-back rule.[16] The statute provides, in pertinent part;

> An action for recovery of personal protection insurance benefits payable under this chapter for accidental bodily injury may not be commenced later than 1 year after the date of the accident causing the injury unless written notice of injury as provided herein has been given to the insurer within 1 year after the accident or unless the insurer has previously made a payment of personal protection insurance benefits for the injury. If the notice has been given or a payment has been made, the action may be commenced at any time within 1 year after the most recent allowable expense, work loss or survivor's loss has been incurred. However, the claimant may not recover benefits for any portion of the loss incurred more than 1 year before the date on which the action was commenced.[17]

"[U]nder its plain terms, MCL 500.3145(1) precludes an action to recover benefits for any portion of a loss incurred more than one year before the date on which the action was commenced."[18] Stove received medical services from Detroit Physical Therapy beginning on December 17, 2007, and ending on April 16, 2008. Thirteen months after it provided its final services to Stove, Detroit Physical Therapy initiated this action against Farm Bureau seeking recovery of the expenses it incurred in treating Stove. Because Detroit Physical Therapy commenced its action on May 15, 2009, it was precluded by the one-year-back-rule[19] from recovering any benefits for treatment occurring before May 15, 2008.[20]

We disagree with Detroit Physical Therapy's argument[21] that the one-year-back rule did not bar its claim for no-fault benefits because Stove filed her claim within the applicable time frame. The case relied on by Detroit Physical Therapy is factually distinguishable from the circumstances of this case because Detroit Physical Therapy did not seek to intervene in Stove's earlier litigation; instead it commenced its own action to recover no-fault benefits after Stove's earlier action was settled and dismissed. Allowing Detroit Physical Therapy's action to relate back in time to Stove's earlier action would "change or enlarge the claims already in existence" and would not further the purpose of the one-year limitation on claims, i.e., "to protect against stale claims and protracted litigation."[22] Additionally, the case relied on by Detroit Physical Therapy concerned the "statute of limitations provision" of MCL 500.3145(1), which limits the

---

[16] MCL 500.3145(1).

[17] *Id.*

[18] *Bronson*, 286 Mich App at 224.

[19] MCL 500.3145(1).

[20] *Bronson*, 286 Mich App at 224.

[21] Citing *Botsford Gen Hosp v Citizens Ins Co*, 195 Mich App 127; 489 NW2d 137 (1992).

[22] *Id.* at 140-141.

time to file an action. In contrast, in the current case we are concerned with the "recovery limitations provision" of MCL 500.3145(1), which limits the time for recovery of benefits.[23]

We likewise find no merit to Detroit Physical Therapy's argument that Stove's earlier filing of a complaint "tolled" the limitations period imposed by MCL 500.5145(1), thereby extending the statutory and recovery limitations period for Detroit Physical Therapy.[24] Although MCL 600.5856 may permit "a renewed action by a different plaintiff when he represents the same interest as the original plaintiff," it only "allows a plaintiff to avoid the bar of the statute of limitations when there has been a prior suit not adjudicated on the merits."[25] Because Detroit Physical Therapy filed its action *after* Stove's claim was adjudicated on its merits and dismissed with prejudice, MCL 600.5856 could not toll the one year statutory limitations period or the recovery limitations period of MCL 500.3145(1).

The dismissal of Detroit Physical Therapy's action was proper because the recovery of any no-fault benefits was precluded by the one-year-back rule[26], which "clearly and unambiguously states that a claimant may not recover no-fault benefits 'for any portion of the loss incurred more than 1 year before the date on which the action was commenced."'[27] As there is no dispute that all the expenses incurred by Detroit Physical Therapy in the provision of medical treatment services to Stove were incurred more than one year before Detroit Physical Therapy filed this action to recover no-fault benefits, MCL 500.3145(1) operates to bar any recovery.[28]

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Talbot

---

[23] *Bronson,* 286 Mich App at 224.

[24] See MCL 600.5856(a), which provides that a civil action is commenced and the statute of limitations is tolled when a complaint is filed and a copy of the summons and complaint are served on the defendant.

[25] *Affiliated Bank of Middleton v American Ins Co,* 77 Mich App 376, 379-380; 258 NW2d 232 (1977); *Lausman v Benton Twp,* 169 Mich App 625, 630; 426 NW2d 729 (1988).

[26] MCL 500.3145(1).

[27] *Grant v AAA Michigan/Wisconsin, Inc,* 272 Mich App 142, 149; 724 NW2d 498 (2006).

[28] We decline to decide whether the release and settlement agreement entered into by Stove and Farm Bureau is enforceable against Detroit Physical Therapy because the trial court did not address or decide the issue and it is "unnecessary to the ultimate resolution of the case." *Heydon v MediaOne of Southeast Michigan, Inc,* 275 Mich App 267, 278-279; 739 NW2d 373 (2007).