STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN HEAD & SPINE INSTITUTE PC, Plaintiff-Appellant,	UNPUBLISHED January 21, 2016
v	No. 324245 Wayne Circuit Court
STATE FARM MUTUAL AUTO INS CO, Defendant-Appellee.	LC No. 13-004938-CZ

Before: STEPHENS, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

In this action under the No-Fault Act, MCL 500.3101 *et seq*., plaintiff Michigan Head & Spine Institute, P.C. (MHSI) filed the present lawsuit against defendant State Farm Mutual Auto Insurance (State Farm), seeking payment for medical services provided to Ashford Garley. The trial court granted summary disposition to State Farm under MCR 2.116(C)(7) based on the conclusion that MHSI's claims were precluded under the doctrines of res judicata and collateral estoppel by a prior federal action brought by Garley against State Farm. At the same time, the trial court denied MHSI's motion for partial summary disposition. MHSI now appeals as of right. Because res judicata bars MHSI's current claims, we affirm.

On December 15, 2011, Garley sustained bodily injury in a motor vehicle accident, after which he obtained medical services from several healthcare providers, including MHSI. Specifically, MHSI provided Garley with services between March 22, 2012 and May 23, 2012. At the time of Garley's accident, Garley's wife had a policy with State Farm, and it is undisputed that State Farm is highest in priority with respect to providing Garley with no-fault benefits. Nonetheless, State Farm failed to pay all of Garley's medical bills, including bills submitted by MHSI.

On August 13, 2012, Garley personally filed suit against State Farm in Wayne County Circuit Court, seeking benefits under the no-fault act. This case was later removed to federal court, and it ultimately resulted in a jury verdict in favor of State Farm in June of 2014. In particular, the jury concluded that Garley had sustained bodily injury in an auto accident, resulting in allowable expenses; but, the jury nonetheless determined that State Farm owed Garley $0. As part of a question submitted to the federal court, the jury explained: "we think all bills related to the accident have been paid and no more money is owed." Notably, MHSI was not a party to Garley's lawsuit and Garley did not specifically request payment of MHSI's bills.

However, it is uncontested that MHSI's treatment of Garley was considered during the federal action insofar as MHSI's medical records pertaining to Garley were introduced into evidence.

MHSI filed the present lawsuit in state district court, seeking payment of Garley's bills under the no-fault act. The case was later transferred to circuit court because the amount in controversy exceeded the district court's $25,000 jurisdictional limit. Thereafter, State Farm moved for summary disposition under MCR 2.116(C)(7) based on the applicability of res judicata and/or collateral estoppel. According to State Farm, MHSI stood in privity with Garley because MHSI sought no-fault benefits on behalf of Garley and such a claim was precluded because the question of State Farm's liability had been previously litigated in Garley's action against State Farm. MHSI opposed State Farm's motion and filed its own motion for partial summary disposition based on the application of res judicata and collateral estoppel. Although MHSI asserted that its claims were not precluded by the verdict in Garley's case, MHSI nonetheless asserted that portions of the jury's verdict should have a preclusive effect in this case. That is, in its motion for partial summary disposition, MHSI maintained that the jury verdict form in Garley's case demonstrated that the jury had concluded that (1) Garley had sustained accidental bodily injury arising out of the operation of a motor vehicle and that (2) Garley had incurred allowable expenses arising out of that accident.

Following a hearing, the trial court denied MHSI's motion for partial summary disposition and entered summary disposition in favor of State Farm under MCR 2.116(C)(7). The trial court concluded that State Farm was entitled to summary disposition for the reasons stated in State Farm's motion, i.e., based on the application of res judicata and collateral estoppel. MHSI now appeals as of right.

On appeal, MHSI argues that the trial court erred by granting summary disposition to State Farm and by denying MHSI's motion for partial summary disposition. According to MHSI, neither res judicata nor collateral estoppel entitle State Farm to summary disposition because MHSI was not a party to Garley's federal action and the issue of State Farm's liability with respect to MHSI's bills in particular was not actually litigated during the federal suit. Further, MHSI maintains that partial summary disposition should have been granted to MHSI because the jury actually determined that Garley suffered bodily injury arising from a motor vehicle accident that resulted in allowable expenses.

"This Court reviews de novo a trial court's decision to grant summary disposition." *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). Under MCR 2.116(C)(7), dismissal of an action is appropriate because a claim is barred by a "prior judgment." See *RDM Holdings, LTD v Contl Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008). The application of legal doctrines, such as res judicata and collateral estoppel, is reviewed de novo. *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

Simply stated, res judicata prevents "multiple suits litigating the same cause of action." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). Res judicata is a judicially created doctrine designed to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999) (quotation marks and citation omitted). Under this doctrine, a subsequent action is

barred when "(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 case was or could have been resolved in the first, and (4) both actions involved the same parties or their privies." *Richards v Tibaldi*, 272 Mich App 522, 531; 726 NW2d 770 (2006). Res judicata has been broadly applied to bar "not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 121.

In this case, the parties do not dispute that Garley's federal lawsuit was decided on the merits and that it resulted in a final decision in State Farm's favor. Instead, MHSI argues that res judicata should not apply because MHSI was not a party to Garley's actions and because MHSI's bills were not submitted to the jury, meaning that the jury did not actually consider whether State Farm owed MHSI payment for services provided. These arguments implicate the issues of privity and whether MHSI's claims were, or could have been, raised in Garley's lawsuit.

With regard to privity, "[t]o be in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Id.* at 122. "The outer limit of the doctrine traditionally requires both a 'substantial identity of interests' and a 'working functional relationship' in which the interests of the nonparty are presented and protected by the party in the litigation." *Id.* (quotation marks and citation omitted). Previously, this Court has specifically concluded that a healthcare provider, seeking payment under a no-fault insurance policy, stands in privity with an injured party who previously brought a lawsuit attempting to claim no-fault benefits under the same policy. *TBCI*, 289 Mich App at 44. In *TBCI*, this Court explained:

> [The healthcare provider], by seeking coverage under the policy, is now essentially standing in the shoes of [the insured]. Being in such a position, there is also no question that [the healthcare provider], although not a party to the first case, was a "privy" of [the insured]. [*Id.*]

As *TBCI* makes plain, in the case of healthcare providers and injured parties seeking benefits under a no-fault insurance policy, both the injured party and the healthcare provider share a common identity of interests in enforcing the provisions of the no-fault act and obtaining benefits under the policy. See generally MCL 500.3112; *Wyoming Chiropractic Health Clinic, PC v Auto-Owners Ins Co*, 308 Mich App 389, 397; 864 NW2d 598 (2014); *Mich Head & Spine Inst, PC v State Farm Mut Auto Ins Co*, 299 Mich App 442, 447; 830 NW2d 781 (2013). That is, while a healthcare provider has independent standing to bring a lawsuit against a no-fault insurer, the fact remains that there is an "interdependence between the claims of a healthcare provider and an injured party," such that "a healthcare provider's eligibility to recover medical expenses is dependent upon the injured party's eligibility for no-fault benefits under the insurance policy." *Chiropractors Rehab Group, PC v State Farm Mut Auto Ins Co*, __ Mich App __, __; __ NW2d __ (2015), slip op at 8-9. See also *Moody v Home Owners Ins Co*, 304 Mich App 415, 440; 849 NW2d 31 (2014). For this reason, a healthcare provider seeking payment under a no-fault insurance policy stands in privity with an injured party who previously brought a lawsuit against the insurer attempting to claim benefits under the same policy. See *TBCI*, 289 Mich App at 44.

It follows that in this case, MHSI stands in privity with Garley. Both MHSI and Garley sought benefits under the same no-fault insurance policy. Both MHSI and Garley have a

common interest in obtaining a judgment against State Farm under this policy and, in particular, they have an interest in obtaining an award of medical costs arising from Garley's accident on December 15, 2011. They both share an interest in showing that Garley was injured in this accident and that he incurred allowable expenses payable by State Farm in accordance with the no-fault act. Indeed, MHSI's entitlement to payment is dependent on Garley's eligibility for no-fault benefits under the insurance policy. See *Chiropractors Rehab Group, PC*, slip op at 8-9. In short, by seeking payment from State Farm, MHSI stands in Garley's shoes and therefore stands in privity with Garley. See *TBCI*, 289 Mich App at 44.

Aside from the issue of privity, MHSI emphasizes on appeal that its bills were not specifically submitted to the jury for actual consideration and that, because the jury did not specifically reject payment of MHSI's bills, res judicata cannot apply. Although it appears that MHSI's bills were not introduced at Garley's trial, the fact remains that the jury did in fact conclude that Garley could recover nothing from State Farm. That is, the jury did consider the broader issue of State Farm's liability under the policy and the jury rejected Garley's claim for no fault benefits, meaning that MHSI, as Garley's privy, cannot relitigate this issue. See *Adair*, 470 Mich at 121. Cf. *TBCI*, 289 Mich App at 44.

Moreover, to the extent MHSI's particular bills were not introduced, this fact is not dispositive because these bills *could* have been submitted to the jury during Garley's action. In this respect, Michigan follows a broad approach to the application of res judicata, and it will be applied to bar "not only claims already litigated, but also every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Adair*, 470 Mich at 121. To determine whether a claim could have been raised in a previous action, courts apply the "same transactional test." *Id.* at 123-125. Under this test, "[w]hether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation,* [and] whether they form a convenient trial unit. . . ." *Id.* at 125 (quotation omitted). "If the new claim or claims arise from the same group of operative facts as the previously litigated claim or claims, even if there are variations in the evidence needed to support the theories of recovery, [this Court] will treat the claims as the same and res judicata will apply." *Green v Ziegelman*, 310 Mich App 436, __; __ NW2d __ (2015), slip op at 5.

In this case, the same group of operative facts underlying Garley's lawsuit give rise to MHSI's current claims for payment of MHSI's bills. Both cases rest on Garley's entitlement to coverage under the State Farm no-fault policy, and in particular Garley's entitlement to benefits for payment of medical care. In both cases, Garley and MHSI assert a right to coverage based on injuries Garley sustained in an automobile accident in December of 2011. All the medical costs at issue in MHSI's case, which Garley incurred before May of 2012, arose before Garley filed his lawsuit in August of 2012. Cf. *Elser v Auto-Owners Ins Co*, 253 Mich App 64, 69; 654 NW2d 99 (2002). Moreover, all of MHSI's medical records pertaining to Garley were in fact introduced into evidence during Garley's trial. Given that the claims at issue clearly arise from the same operative facts, Garley plainly could have sought payment of MHSI's medical bills during his trial and, if MHSI felt its interests were not being adequately protected, MHSI could

have intervened in Garley's lawsuit to protect its rights.[1] See MCR 2.209; see also *Richards*, 272 Mich App at 531-532 ("The matter could have been resolved in the first suit had plaintiff added defendants as parties or had defendants intervened in the action."); *Tomalis v Tradesmen's Nat Bank of New Haven*, 19 Mich App 592, 594; 173 NW2d 259 (1969). In short, viewed pragmatically, MHSI's medical bills could easily have been addressed during Garley's federal lawsuit for no-fault benefits against State Farm.

In sum, res judicata applies in this case because Garley's lawsuit resulted in a final decision on the merits in State Farm's favor, MHSI is Garley's privy, the jury rejected Garley's claim for benefits, and State Farm's obligations with respect to the payment of MHSI's bills in particular could have been addressed during the previous litigation. See *Richards*, 272 Mich App at 531. In these circumstances, State Farm should not be faced with the costs and vexation of additional litigation, and the interests of judicial economy will be served by the application of res judicata to preclude MHSI's lawsuit. See *Pierson Sand & Gravel, Inc*, 460 Mich at 380.

Having determined that the trial court properly granted State Farm's motion for summary disposition based on the application of res judicata, we need not decide whether collateral estoppel also entitled State Farm to summary disposition and we need not consider MHSI's arguments regarding its motion for partial summary disposition.

Finally, we note briefly that MHSI argues that application of res judicata in this case will deprive MHSI of due process and its statutory right to reimbursement of medical expenses under MCL 500.3112. These issues are unpreserved because MHSI failed to raise them in the trial court, and they are improperly presented to this Court because they have not been included in MHSI's statement of the questions presented. Consequently, these issues need not be decided. See *Hines v Volkswagen of Am, Inc*, 265 Mich App 432, 443; 695 NW2d 84 (2005); *Bouverette v Westinghouse Elec Corp*, 245 Mich App 391, 404; 628 NW2d 86 (2001).

In any event, these arguments are without merit. Although it is true that MHSI has standing to pursue claims for no-fault benefits under MCL 500.3112, this does not obviate the privity that exists between MHSI and Garley by virtue of their shared interests in obtaining benefits from State Farm, nor does it overcome the fact that MHSI's bills could have been presented during Garley's action. Thus, MHSI's standing under MCL 500.3112 does not prevent application of res judicata. Rather, if anything, MHSI's standing underscores MHSI's ability and failure to intervene in Garley's lawsuit. Likewise, with regard to due process, MHSI has not shown that application of the doctrine of res judicata violates principles of due process. As discussed, there was a shared identity of interests between MHSI and Garley, and this shared identity of interests would generally ensure that MHSI's rights were adequately protected. See *Beyer v Verizon N Inc*, 270 Mich App 424, 435; 715 NW2d 328 (2006). Moreover, if MHSI felt

[1] There has been no assertion that MHSI was unaware of Garley's lawsuit. Moreover, in September of 2012, while Garley's suit was ongoing, State Farm moved for summary disposition in the district court against MHSI based on the suit that had been filed by Garley. Clearly, by that time at the latest, almost 2 years before the conclusion of Garley's suit, MHSI knew of Garley's lawsuit and could have taken steps to intervene.

its interests were not adequately represented by Garley, it should have intervened in Garley's action against State Farm. See MCR 2.209. MHSI's failure to do so does not demonstrate a deprivation of due process.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto