

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 7, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP1682

Cir. Ct. No. 2006CV27

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

RICHLAND COUNTY,

PLAINTIFF-APPELLANT,

V.

FRANKLIN FARMERS' MUTUAL INSURANCE COMPANY,

DEFENDANT-THIRD-PARTY PLAINTIFF,

GRINNELL MUTUAL REINSURANCE COMPANY,

**DEFENDANT-THIRD-PARTY
PLAINTIFF-RESPONDENT,**

V.

JOHN T. SHEIRE, JR.,

THIRD-PARTY DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Richland County:
EDWARD E. LEINEWEBER, Judge. *Affirmed.*

Before Dykman, Vergeront and Lundsten, JJ.

¶1 PER CURIAM. Richland County appeals a summary judgment order dismissing its action against Franklin Farmers' Mutual Insurance Company and Grinnell Mutual Reinsurance Company in which it sought recovery of funds it expended for John Sheire's medical bills. The circuit court concluded that the County's claim was precluded by an earlier action in Sauk County, and any entitlement to relief from the Sauk County judgment should have been pursued in Sauk County with a motion under WIS. STAT. § 806.07.¹ The County argues that the Sauk County judgment was procured by fraud on the court, and claim preclusion does not apply because there was no identity of the causes of action. The County also argues that WIS. STAT. § 49.89(8)(a) should be construed to allow the County to file a separate action to recover medical assistance payments, even if it was a party to the earlier action. We reject these arguments and affirm the order.

¶2 Sheire was injured when his car struck a cow on the highway. Richland County paid Sheire's medical bills through its medical assistance program. Sheire filed an action in Sauk County against the cow's owners and their insurers. The complaint also named Richland County as a defendant based on its subrogation interest. Although the County's attorney corresponded with the other parties, the County never filed an answer or notice of appearance and did not participate in court-ordered mediation. After Sheire's attorney notified the Sauk

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

County court that “all parties that have answered and appeared in this action” had reached a settlement, the court dismissed the Sauk County action.

¶3 Twenty-nine months later, the County filed this action in Richland County seeking recovery from the cow owners’ insurers for Sheire’s medical costs pursuant to WIS. STAT. § 49.89(8).² The County argued that, under WIS. STAT. § 803.03(2)(bm),³ Sheire’s attorney should have represented Richland County’s

² WISCONSIN STAT. § 49.89(8) provides:

WELFARE CLAIMS NOT PREJUDICED BY RECIPIENT’S RELEASE. (a) No person who has or may have a claim or cause of action in tort or contract and who has received assistance under this chapter or under s. 253.05 as a result of the occurrence that creates the claim or cause of action may release the liable party or the liable party’s insurer from liability to the units of government specified in sub. (2). Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in consideration of a release from liability is evidence of the payer’s liability to the unit of government that granted the assistance.

(b) Liability under par. (a) is to the extent of assistance payments under this chapter or under s. 253.05 resulting from the occurrence creating the claim or cause of action, but not in excess of any insurance policy limits, counting payments made to the injured person. The unit of government administering assistance shall include in its claim any assistance paid to or on behalf of dependents of the injured person, to the extent that eligibility for assistance resulted from the occurrence creating the claim or cause of action.

³ WISCONSIN STAT. § 803.03(2)(bm) provides:

Joinders because of implication of medical assistance. If the department of health and family services is joined as a party pursuant to par. (a) and s. 49.89(2) because of the provision of benefits under subch. IV of ch. 49, the department of health and family services need not sign a waiver of the right to participate in order to have its interests represented by the party that caused the joinder. If the department of health and family services makes no selection under par. (b), the party causing the joinder shall represent the interests of the department of health

(continued)

interests in the Sauk County action. The circuit court disagreed, concluding that Richland County should have requested relief from the Sauk County judgment under WIS. STAT. § 806.07, rather than instituting a new action based on its subrogation rights.

¶4 In effect, the circuit court dismissed the action based on claim preclusion, although it did not use that terminology. Under the claim preclusion doctrine, a final judgment is conclusive in all subsequent actions between the same parties as to all matters that were litigated or might have been litigated in the former proceedings. *Northern States Power Co. v. Bugher*, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995). Claim preclusion applies when three factors are met: (1) an identity between the parties or their privies in the prior and present lawsuits; (2) an identity between the causes of action in the two lawsuits; and (3) a final judgment on the merits in a court of competent jurisdiction. *Id.* at 551. The County does not dispute that the parties are the same or that the Sauk County judgment was a final judgment on the merits in a court of competent jurisdiction. The County argues that the two causes of action are not the same. The County contends that the Sauk County action was a tort action resulting from the cow owners' negligence while the Richland County action is an "entirely separate" claim for medical expenses. The County argues that its claim did not arise until it discovered the original action had been dismissed and its right to recover medical assistance payments under WIS. STAT. § 49.89(5) had been denied.

and family services and the department of health and family services shall be bound by the judgment in the action.

¶5 Wisconsin has adopted a transactional approach to determine whether an identity of claims exists. *See DePratt v. West Bend Mut. Ins. Co.*, 113 Wis. 2d 306, 311-12, 334 N.W.2d 883 (1983). Under the claim preclusion doctrine, a final judgment “extinguishes all rights to remedies against a defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.” *Kruckenberg v. Harvey*, 2005 WI 43, ¶25, 279 Wis. 2d 520, 694 N.W.2d 879. In determining whether claims arise from a single transaction, the court considers whether the facts are related in time, space, origin, or motivation. *See Northern States Power Co.*, 189 Wis. 2d at 554. Under the transactional analysis, the facts of a claim, not the legal theories or relief sought, are relevant. *See Menard, Inc. v. Liteway Lighting Prods.*, 2005 WI 98, ¶32, 282 Wis. 2d 582, 698 N.W.2d 738. Where one acquires a right by subrogation, that right is not a separate cause of action from the right held by the subrogor. *Wilmot v. Racine County*, 136 Wis. 2d 57, 63, 400 N.W.2d 917 (1987).

¶6 The circuit court correctly applied claim preclusion to bar this action because this claim and the Sauk County claim arose out of the same series of connected facts. Richland County was a named defendant in the Sauk County action based on its subrogation interest. Richland County’s claim arose from the accident and its payment of Sheire’s medical expenses. Under WIS. STAT. § 803.03(2)(bm), Richland County was bound by the judgment in the Sauk County action. If Richland County’s interests were not properly represented, the County should have sought relief from the judgment under WIS. STAT. § 806.07.

¶7 The County also argues that WIS. STAT. § 49.89(8)(a) should be construed to allow a second action. That statute, entitled “Welfare claims not prejudiced by recipient’s release,” provides, in part: “Any payment to a beneficiary or recipient of assistance under this chapter or under s. 253.05 in

consideration of a release from liability is evidence of the payer's liability to the unit of government that granted the assistance." The County argues that the language "is evidence of" displays legislative intent to allow the County to commence a separate action. We disagree. Nothing in that statute suggests that the County may commence a separate action after having been made a party to an earlier action involving the same claim. The phrase "is evidence of" does not suggest that a new cause of action is created that would circumvent the application of claim preclusion.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

