STATE OF MICHIGAN

COURT OF APPEALS

GWENDOLYN MARSHALL,

Plaintiff-Appellant,

v

FRANKLIN LIFE INSURANCE COMPANY,

Defendant-Appellee,

and

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant-Third Party Plaintiff,

v

JACK DEMMER FORD, INC. and ROBERT REUTHER,

Third Party Defendants.

UNPUBLISHED
February 20, 2001

No. 217742
Wayne Circuit Court
LC No. 97-733461-CK

Before: Sawyer, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court granting summary disposition in favor of defendant Franklin Life Insurance Company[1] pursuant to MCR 2.116(C)(7) (claim barred by prior judgment). We affirm.

[1] Because State Farm Mutual Automobile Insurance Company, Jack Demmer Ford, and Robert Reuther are not parties to this appeal, use of "defendant" in this opinion will refer solely to Franklin Life.

On June 26, 1995, plaintiff was injured in a motor vehicle accident when she was hit from behind as she was waiting to make a left turn. This was a hit-and-run accident and plaintiff wrote the license plate of the vehicle that struck her. The license plate number indicated that the vehicle was owned by Jack Demmer Ford as a rental and had been rented by Robert Reuther. Later investigation revealed that Reuther was not in the area of the accident on that day. In any event, plaintiff suffered injury to her neck and left shoulder and later required surgery to her left shoulder.

Plaintiff's automobile insurance was with State Farm. She also had an insurance policy with defendant that covered her automobile payments of $489.04 a month while she was disabled. Based on that policy, she filed a claim with defendant for her automobile payments. Defendant denied the claim and plaintiff filed suit against defendant for breach of contract in 1996. The 1996 suit was mediated and both parties accepted mediation. Defendant paid plaintiff $4,500 pursuant to the mutually accepted mediation award and the case was dismissed with prejudice on July 9, 1997.

On October 17, 1997, plaintiff filed essentially the same complaint against defendant for automobile payments that accrued after the date of the mediation evaluation, contending that she was still disabled and therefore entitled to additional damages. Defendant moved for summary disposition under MCR 2.116(C)(7), claiming that MCR 2.403 and res judicata barred the second action. The trial court agreed and granted defendant's motion.

Plaintiff first asserts that the trial court erred in granting summary disposition based on MCR 2.403(M)(1) because that rule only disposes of claims to the date of the judgment. The rule provides:

> If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

When interpreting the Michigan Court Rules, this Court construes the rules in light of their intended purposes and uses the ordinary rules of statutory construction. *Sheffer v North American Ins Co*, 227 Mich App 723, 724-725; 578 NW2d 691 (1998). "It is a general rule of grammar and of statutory construction that a modifying word or clause is confined solely to the last antecedent, unless a contrary intention appears." *Sun Valley Foods Co v Ward*, 460 Mich 230, 237; 596 NW2d 119 (1999).

The sentence at issue ("The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.") has two basic clauses followed by the modifying clause. The first clause of the sentence states that the judgment or dismissal disposes of all claims in the action. That clause is not modified by the phrase "to the date it is entered" because there is another clause which is the last antecedent to the modifier. When this statute is read in its grammatical context, it is clear that the limiting clause of "to the date it is entered" is linked only to the fees, costs, and interest. Further, "to the

date it is entered" is an infinitive phrase clearly modifying "judgment." Thus, the judgment disposes of *all* claims, but includes only the fees, costs, and interest incurred as of the date the judgment is entered.

Under a plain reading of the court rule utilizing the usual rule of grammatical construction that a modifying word or clause is confined solely to the last antecedent, we conclude that all of plaintiff's claims in this action were previously dismissed with prejudice by the July 9, 1997, order of dismissal that was based on the parties' acceptance of the mediation evaluation.

Plaintiff next argues that the damages now at issue could not have been raised previously, and that this action is not barred by res judicata because the automobile payments in question had not accrued at the time of the mediation evaluation.

"Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical." *Eaton Co Bd of Rd Comm'rs v Schultz,* 205 Mich App 371, 375; 521 NW2d 847 (1994). The doctrine of res judicata requires: (1) that the first action be decided on the merits, (2) that the matter contested in the second case was or could have been resolved in the first, and (3) both actions involve the same parties or their privies. *Id.*, pp 375-376. Our Supreme Court has adopted a broad view of application of the doctrine of res judicata, which applies the doctrine to those claims arising out of the same transaction which plaintiff could have brought, but did not. *Gose v Monroe Auto Equipment Co,* 409 Mich 147, 160; 294 NW2d 165 (1980).

In this case plaintiff only contests the second requirement, which focuses on whether the issues of the second action could have been resolved in the prior action. Plaintiff's claim is that the damages presently at issue could not have been resolved previously because they had not accrued at that time. The first complaint filed in 1996 against defendant alleges that the insurance coverage required defendant to pay plaintiff's automobile payment of $489.04 a month *during the period of plaintiff's disability*. The second complaint filed in 1997 against defendant alleges the same claim and, importantly, does not allege that plaintiff suffered any new disability such that her future damages were not included in the original judgment. See, e.g., *McMillan v Auto Club Ins Ass'n,* 195 Mich App 463, 468; 491 593 NW2d (1992) (the defendant insurer was precluded by res judicata from bringing a declaratory judgment action claiming that it had no further liability with regard to the plaintiff's automobile accident where the first action included a claim for judgment regarding the insurer's ongoing liability to the plaintiff).

Prospective damages are allowable in contract actions if those damages are "bound to occur" and can be discerned with a reasonable degree of certainty. *Kokkonen v Wausau Homes, Inc,* 94 Mich App 603, 612-614; 289 NW2d 382 (1980). Here, plaintiff's damages were easily ascertainable based on the amount of her monthly automobile payment and her period of disability. Further, one goal of mediation is to have an entire civil action involving monetary damages submitted to the mediators so they can evaluate the total valuation of the case. *Reddam v Consumer Mortgage Corp,* 182 Mich App 754, 757; 452 NW2d 908 (1990). "Absent a showing that less than all issues were submitted to mediation, a mediation award covers the entire matter and acceptance of that mediation award settles the entire matter." *Id.*

There has been no showing that the mediation evaluation was based on anything less than the entire matter. We find, therefore, that plaintiff's original action against defendant could have included all her damages, including prospective damages. Therefore, plaintiff's claim is barred by the doctrine of res judicata.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Hilda R. Gage