

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANK MONAT,

Plaintiff-Appellee,

v

STATE FARM INSURANCE COMPANY,

Defendant-Appellant.

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UNPUBLISHED  
February 15, 2002

No. 222690  
Wayne Circuit Court  
LC No. 98-816391-CK

Before: Neff, P.J., and Wilder and Cooper, JJ.

PER CURIAM.

Defendant appeals by leave granted the order denying its motion for summary disposition in this action to recover first-party no-fault benefits. The court rejected defendant's claim that collateral estoppel barred plaintiff's action. We affirm.

The action arose out of an automobile accident in which plaintiff's vehicle was rear-ended by another vehicle. Plaintiff filed a third-party negligence action against the other driver. Plaintiff received personal injury protection (PIP) benefits from defendant, his insurer and filed this first-party action after defendant stopped paying benefits. In the third-party suit the jury returned a no cause verdict, finding by special verdict that plaintiff was not injured.

Defendant moved for summary disposition in this first-party action, asserting that the issue of whether plaintiff was injured as a result of the accident had been fully adjudicated in the third-party action and should be given collateral estoppel effect to bar this action. The trial court disagreed and denied the motion.

This Court will review de novo both a trial court's decision on a motion for summary disposition under MCR 2.116(c)(7) and issues concerning the application of collateral estoppel. *Barrow v Prichard*, 235 Mich App 478, 480; 597 NW2d 853 (1999).

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior action culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *Id.* Generally, mutuality of estoppel is a necessary element of collateral estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995).

The doctrine of mutuality of estoppel requires that, in order for a party to estop an adversary from relitigating an issue, that party must also have been a party, or a privy to a party, in the previous action. In other words, the estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it, had it gone against him. *Lichon v American Universal Insurance Company*, 435 Mich 408, 426-428; 459 NW2d 288 (1990). Mutuality of estoppel remains the law in this state, with limited exceptions not applicable here. *Id.*

Defendant seeks to extend a line of cases which have held that a criminal defendant who has raised and obtained a ruling on the issue of ineffective assistance of counsel is collaterally estopped from subsequently asserting a civil claim of legal malpractice. These decisions are based in part on public policy which is not in play in this case. *Alterman v Proviser*, 195 Mich App 422, 426; 491 NW2d 868 (1992).

Defendant has cited no cases that extend the relaxation of the mutuality requirement into the insurance context and raises no persuasive argument to do so. Where the Supreme Court has affirmed the continuing vitality of the mutuality requirement, there is no basis for reversing the trial court's decision here.

Affirmed. The stay of proceedings previously granted is lifted.

/s/ Janet T. Neff

/s/ Jessica R. Cooper