STATE OF MICHIGAN

COURT OF APPEALS

DURRARD HUTCHERSON and LARRY JACKSON,

Plaintiffs-Appellants,

V

ANDREA SMITH, Personal Representative of the Estate of KELLY ALAN SMITH, Deceased,

Defendant-Appellee.

UNPUBLISHED
November 4, 2004

No. 248143
Wayne Circuit Court
LC No. 01-131243-NI

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiffs appeal the trial court's order that granted defendant's motion for summary disposition predicated on the doctrine of res judicata, and we affirm.[1]

I

In October 1998, plaintiffs were passengers in a car driven by Kelly Alan Smith, defendant's decedent, that was involved in an accident with a car driven by Bertha Johnson. Plaintiffs' filed suit against defendant, Johnson, and Titan Insurance[2] in August 1999. Plaintiffs settled, and executed a release with respect to Johnson, "his/her insurers and all other persons from all claims of any kind" arising out of the accident. In August 2000, plaintiffs prepared a proposed order that dismissed Johnson and defendant "with prejudice," and the trial court entered the order.

Plaintiffs filed the instant case in September 2001, and sought damages from Smith's estate for injuries sustained in the October 1998 accident. After discovering the order dismissing the 1999 suit with prejudice, defendant filed a motion for summary disposition on the basis of res

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[1] This appeal is being decided without oral argument pursuant to MCR 7.214(E).

[2] Neither plaintiffs nor Smith had insurance; thus, plaintiffs' claim for no-fault insurance benefits were assigned to Titan Insurance.

judicata under MCR 2.116(C)(7). Plaintiffs opposed the motion, conceded that an order that dismissed the prior case with prejudice had been entered, but asserted that that order was void because, under MCR 2.102(E), the prior case had been dismissed with respect to defendant because plaintiffs never served defendant with process in the prior case.[3] Accordingly, plaintiffs argued, because defendant was previously dismissed by operation of law, defendant could not have been dismissed with prejudice.

Plaintiffs also filed a motion for relief from judgment from the August 2000 order that dismissed the 1999 case with prejudice, raising the same argument, as well as asserting that the order contained a clerical error, as plaintiffs alleged that they had not intended to dismiss defendant with prejudice in that case. This motion was assigned to the same trial judge that was assigned to the instant case. The judge denied the motion for relief from judgment, and a subsequent motion for reconsideration.

In the instant case, the trial court granted defendant's motion for summary disposition on the basis of res judicata, and denied plaintiffs' subsequent motion for reconsideration. Plaintiffs now appeal from the order that granted summary disposition in favor of defendant. Plaintiffs did not appeal from the order that denied their motion for relief from judgment in the 1999 case.

II

Plaintiffs maintain, incorrectly, that the trial court erred when it ruled that this action is barred by res judicata because defendant, though named as a party in a previous action arising out of the same automobile accident, was not served with process. Accordingly, plaintiffs argue, defendant was not a "party" to the previous action for the purposes of res judicata. The doctrine of res judicata bars a suit which is based upon the same transaction or events that were the subject of a prior suit. *Pierson Sand & Gravel, Inc v Keeler Brass Co,* 460 Mich 372, 380; 596 NW2d 153 (1999). The doctrine "bars relitigation of claims actually litigated and those claims arising out of the same transaction that could have been litigated." *Huggett v Dep't of Natural Resources,* 232 Mich App 188, 197; 590 NW2d 747 (1998), aff'd 464 Mich 711; 629 NW2d 915 (2001). "For the doctrine to apply (1) the former suit must have been decided on the merits, (2) the issues in the second action were or could have been resolved in the former one, and (3) both actions must involve the same parties or their privies." *Energy Reserves, Inc v Consumers Power Co,* 221 Mich App 210, 215-216; 561 NW2d 854 (1997). "Because res judicata is a question of law, we review de novo its application as well as the court's action on a motion for summary disposition." *Phinisee v Rogers,* 229 Mich App 547, 551-552; 582 NW2d 852 (1998).

The first and second elements of res judicata were clearly satisfied. In both actions, plaintiffs sought damages from Smith's estate for injuries sustained in the same automobile accident. Smith's estate was voluntarily dismissed with prejudice from the prior action, which operates as an adjudication on the merits. *Limbach v Oakland Co Bd of Co Rd Comm'rs,* 226 Mich App 389, 396; 573 NW2d 336 (1997).

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[3] The court rule directs trial court clerks to enter an order that dismisses without prejudice "as to a defendant who has not been served with process." MCR 2.102(E).

Both plaintiffs and Smith's estate were named parties to the prior suit. The parties agree that Smith's estate was never served with process in the prior action, and defendant admits that it did not appear in that action. Plaintiffs say that because defendant was not served with process and did not appear, defendant was not a "party" to the prior action for the purposes of res judicata. However, this Court defines a "party" as "a person whose name is designated on record a plaintiff or defendant." *Fast Air, Inc v Knight*, 235 Mich App 541, 544; 599 NW2d 489 (1999). Whether that person was properly served with process is not dispositive here. *Id.* Because all three elements of res judicata were met, we hold that the trial court properly granted summary disposition in favor of defendant. Here, plaintiffs prepared the stipulation and order of dismissal with prejudice and failed to appeal a binding ruling from the trial court that rejected plaintiffs' request for relief from judgment. Because the court's order applied to defendant and plaintiffs failed to contest the order or appeal the ruling that reaffirmed it, plaintiffs are estopped from asserting that defendant was not a "party" for purposes of res judicata.

Furthermore, summary disposition under MCR 2.116(C)(7) is appropriate where a suit is barred by release.[4] Here, plaintiffs, pursuant to their settlement with Johnson, released *all parties* from *any and all* claims arising from the accident at issue here. When a plaintiff executes a release that releases all parties from liability for injury arising out of an automobile accident, such a release bars a subsequent suit against *any person*, regardless of whether that person was a party to a previous lawsuit. *Romska v Opper*, 234 Mich App 512, 515-521; 594 NW2d 853 (1999). "There cannot be any broader classification that the word 'all,' and 'all' leaves room for no exceptions." *Id.* at 515-516 (internal quotation and citation omitted). Though the trial court did not grant summary disposition on this basis, we need not reverse when the trial court reaches the correct result under alternative reasoning. See *Grand Trunk W R, Inc v Auto Warehousing Co*, 262 Mich App 345, 354; 686 NW2d 756 (2004).

Moreover, we reject plaintiffs' argument that summary disposition was improperly granted because the order dismissing the 1999 case with prejudice was void under MCR 2.102(E). Plaintiffs failed to serve defendant in the 1999 case, and then claim that this failure invalidates the order that dismissed that case with prejudice. Plaintiffs prepared that order, and then claim that it incorrectly dismissed defendant from the 1999 case because of plaintiffs' own alleged clerical error. Plaintiffs unsuccessfully sought relief from judgment with respect to that order on those bases, and then failed to appeal from that order. Now, plaintiffs couch their appeal on these alleged "errors" that are the direct result of their own conduct. Plaintiffs ask us to clear the slate of their mistakes in pursuing this case, and give them yet a third opportunity to pursue damages against defendant. We decline to do so. "[E]rror requiring reversal may only be predicated on the trial court's actions and not upon alleged error to which the aggrieved party

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[4] Defendant raises this issue on appeal, and raised it before the trial court in response to plaintiffs' motion for relief from judgment in the 1999 case, and in response to their motion for reconsideration of the order that granted summary disposition in favor of defendant here. The trial court did not address this issue. However, we may nevertheless address the issue if sufficient facts appear on the record, and the issue is a question of law. *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997). Here, it appears undisputed that plaintiffs signed a release prior to the entry of the order dismissing the 1999 case with prejudice.

contributed by plan or negligence." *Lewis v Legrow*, 258 Mich App 175, 210; 670 NW2d 675 (2003). Accordingly, we hold that plaintiffs are bound by the order that dismissed the 1999 case with prejudice and the release they executed, and therefore, we hold that the trial court properly granted summary disposition in favor of defendant.

Affirmed.

/s/ Henry William Saad
/s/ Peter D. O'Connell