

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHELLE COLLIER,

Plaintiff-Appellee,

v

LIBERTY MUTUAL INSURANCE COMPANY,

Defendant-Appellant.

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UNPUBLISHED

February 24, 2011

No. 294965

Wayne Circuit Court

LC No. 08-100946-NF

Before: SAAD, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals the trial court's order that granted summary disposition to plaintiff. For the reasons set forth below, we reverse and remand for further proceedings.

**I. FACTS**

Plaintiff was involved in an automobile accident on March 19, 2001 while she was a passenger in a vehicle insured by defendant. Plaintiff did not immediately seek medical treatment, but later went to Sinai-Grace Hospital and complained of headaches and neck pain. Doctors suspected plaintiff might have meningitis and advised her to see her family doctor for further care. After some follow up care and physical therapy, plaintiff did not seek further medical help until June 2002, after she gave birth to a baby. Plaintiff reported symptoms of numbness and shaking in her right leg, and doctors treated plaintiff for lumbar disc disease.

In February 2004, plaintiff was diagnosed with Chiari malformation with herniation of the tonsils below C1 and a small syrinx at the C2-3 level. A Chiari malformation is a congenital structural defect in the cerebellum, where the skull joins the spine. On February 26, 2004, Dr. Philip Friedman performed a suboccipital craniectomy with decompression of the Chiari malformation and a cervical laminectomy at C1, 2 and 3 with dural decompression. After the surgery, plaintiff reported worsening weakness in her legs and, in September 2004, she was diagnosed with transverse myelitis, a neurological disorder causing inflammation in a segment of the spinal cord. At that time, plaintiff could walk using a cane or walker but, after several months, she reported that her leg weakness worsened and she began to use a wheelchair.

Defendant stopped paying medical benefits to plaintiff in September 2001, after an independent medical examination. Plaintiff filed a lawsuit against defendant and the matter was arbitrated on December 22, 2004. According to defendant, plaintiff sought \$438,200 for

attendant care benefits, wage loss and replacement services. The arbitrators issued an award of \$165,000 to plaintiff on January 3, 2005. The award contains no findings of fact or conclusions of law, and specifies that it includes all outstanding benefits from March 19, 2001 through December 22, 2004. Plaintiff subsequently filed another lawsuit against defendant and the parties entered into a settlement agreement in which defendant agreed to pay plaintiff \$130,000 for attendant care, mileage and medical expenses through December 12, 2006. The settlement explicitly excluded any alleged expenses for wheelchair lifts and a handicap van.

Plaintiff filed this lawsuit on January 11, 2008 and alleged that, although defendant continued to pay attendant care benefits, it failed or refused to pay for reasonably necessary products or accommodations, including an interior stair lift and an exterior wheelchair lift. Plaintiff later asserted that she is also entitled to payment for a van that can accommodate her wheelchair.

On March 4, 2009, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that collateral estoppel precludes relitigation of the question of whether plaintiff's injuries are related to the motor vehicle accident because this issue was decided by the arbitration panel in a valid final judgment of the arbitration panel. Plaintiff also argued that the home modifications and handicap van are reasonably necessary for her care and recovery. In response, defendant asserted that collateral estoppel does not apply because the arbitration panel never issued a valid final judgment and did not make a finding that plaintiff's current medical problems were caused by the 2001 automobile accident. Defendant also argued that plaintiff's alleged expenses for the wheelchair lifts and handicap van were not reasonable or "incurred" within the definition set forth in *Proudfoot v State Farm Mut Ins Co*, 469 Mich 476; 673 NW2d 739 (2003).

At a motion hearing on April 2, 2009, the trial court granted summary disposition to plaintiff. Specifically, the trial court ruled that the arbitration panel decided that plaintiff's injuries are related to the automobile accident and that defendant cannot relitigate that issue in a subsequent proceeding. The court ordered defendant to pay plaintiff the estimated amounts she would incur to purchase two wheelchair lifts and a handicap van. The court also awarded plaintiff attorney fees and penalty interest.

## II. ANALYSIS

Defendant contends that the trial court erred by granting plaintiff's motion for summary disposition. As this Court explained in *Ward v Titan Ins Co*, 287 Mich App 552, 554; 791 NW2d 488 (2010):

We review a decision on a motion for summary disposition de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). We must review the record in the same manner as the trial court to determine whether the movant was entitled to judgment as a matter of law. *Morales v Auto-Owners Ins Co*, 458 Mich 288, 294; 582 NW2d 776 (1998). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Summary disposition is proper under MCR 2.116(C)(10) where the proffered evidence fails to establish a genuine issue

regarding any material fact and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10); MCR 2.116(G)(4); *Coblentz, supra* at 568, quoting *Maiden, supra*.

“The interpretation of statutes and court rules is also a question of law subject to de novo review, as is the application of legal doctrines, such as res judicata and collateral estoppel.” *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

MCL 500.3105(1) states that “an insurer is liable to pay benefits for accidental bodily injury arising out of the ownership, operation, maintenance or use of a motor vehicle as a motor vehicle.” Plaintiff sought payment pursuant to MCL 500.3107(1)(a), which provides for recovery of personal protection insurance benefits for “[a]llowable expenses consisting of all reasonable charges incurred for reasonably necessary products, services and accommodations for an injured person’s care, recovery, or rehabilitation.” If a claim for benefits is denied, the insured has the burden to prove that the charges are compensable. *United States Fidelity Ins & Guar Co v Michigan Catastrophic Claims Ass’n*, 484 Mich 1, 18; 773 NW2d 243 (2009).

The trial court ruled that defendant is collaterally estopped from relitigating whether plaintiff’s injuries are related to the 2001 automobile accident for purposes of her claimed allowable expenses. “Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding.” *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006), citing 1 Restatement Judgments, 2d, § 27, p 250. “Generally, for collateral estoppel to apply three elements must be satisfied: (1) ‘a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment’; (2) ‘the same parties must have had a full [and fair] opportunity to litigate the issue’; and (3) ‘there must be mutuality of estoppel.’” *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004), quoting *Storey v Meijer, Inc*, 431 Mich 368, 373 n 3; 429 NW2d 169 (1988). With regard to arbitration proceedings, collateral estoppel applies to factual determinations made by the arbitrators. *Porter v Royal Oak*, 214 Mich App 478, 485; 542 NW2d 905 (1995).

We hold that the trial court erred when it granted summary disposition to plaintiff. For purposes of collateral estoppel, the arbitration award contains no factual determinations. Accordingly, there is no “valid and final judgment” on an essential question of fact. Moreover, the award is specifically limited to plaintiff’s entitlement to benefits up to December 22, 2004. Thus, there is no showing that the arbitration panel resolved the question of whether there is a causal connection between the automobile accident and any expenses at issue after the panel rendered its decision. As one example, the arbitration panel did not make a factual finding that the eventual paralysis that confined plaintiff to a wheelchair that was allegedly caused by transverse myelitis was in any way related to the automobile accident. The doctrine of collateral estoppel applies only when the ultimate issue to be determined in the subsequent action is “identical, and not merely similar” to the issue involved in the previous action. *Eaton Co Rd Commr’s v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994). Further, the record reflects that questions of fact remain in dispute about whether plaintiff’s requested benefits constitute reasonable expenses for reasonably necessary products.

We further observe that it is also undisputed that plaintiff has not yet taken action to become liable for the costs of the proposed home modifications and handicap van. *Proudfoot*, 469 Mich at 484. Thus, were the trial court correct in finding that plaintiff is entitled to her requested benefits, the amounts were not “overdue” because the expenses were not yet incurred. *Id.* at 484-485; MCL 500.3142; MCL 500.3148. Thus, the trial court erred when it ordered defendant to pay the amount set forth in plaintiff’s estimates and it erred when it awarded plaintiff attorney fees and penalty interest.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Henry William Saad  
/s/ Kirsten Frank Kelly  
/s/ Pat M. Donofrio