STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF LAMAREO BALDWIN, by GERTRUDE LEE, Personal Representative,

Plaintiff-Appellant,

v

ESTATE OF TOM DAVIES, by GEORGE HEITMANUS, Personal Representative, and TOM DAVIES SEAMLESS GUTTERS,

Defendants-Appellees.

UNPUBLISHED
May 20, 2021

No. 353852
Macomb Circuit Court
LC No. 2019-002846-NI

Before: TUKEL, P.J., and SERVITTO and RICK, JJ.

PER CURIAM.

In this case arising from a fatal single-car accident, Plaintiff appeals as of right the trial court's order granting summary disposition to defendants. Plaintiff sued the Estate of Tom Davies on the theory that it had negligently entrusted the car to driver involved in the accident. Plaintiff sued Tom Davies Seamless Gutters (TDSG) on the theory that, as the owner of the vehicle, it was liable for the injuries.

The trial court granted summary disposition to the Estate on the basis of res judicata, based on the earlier dismissal of a previous action brought in Wayne County. The trial court granted summary disposition to TDSG based on undisputed facts, as any ownership interest TDSG previously had in the automobile involved in the accident had been supplanted by a successor corporation. Plaintiff challenges those rulings, but finding no error, we affirm the grant of summary disposition.

I. UNDERLYING FACTS

This case arises out of a fatal single-car motor vehicle accident that took place on August 20, 2016 in Leelanau Township, Michigan. On that day, Brian Surhigh was driving to a job site in northern Michigan for Pro Exterior Renovations, LLC ("PER"). Surhigh was driving a Ford F-150 provided to him by PER; Plaintiff's decedent Lamareo Baldwin was one of the passengers in the vehicle and was killed in the accident. After Baldwin's death, his survivors applied for and

received survivors benefits under the Worker's Disability Compensation Act of 1969, MCL 418.101 *et seq.* ("WDCA"), which amounted to approximately $400 per month.[1]

Sciotti and Davies were partners of TDSG, but they formed PER—a siding and gutter business—together in 2015. Davies purchased the F-150 involved in the accident for TDSG. The vehicle was titled in Davies's name and initially insured by Farm Bureau Insurance Company of Michigan ("Farm Bureau") through a policy issued to TDSG. After the formation of PER, the policy for the F-150 was transferred to that company. Consequently, the F-150 was insured by Farm Bureau through a policy issued to PER on the date of the accident.

On July 17, 2017, plaintiff filed a complaint in Wayne Circuit Court, lower court case no. 17-010630-CK, against Farm Bureau and Surhigh, seeking no-fault benefits from Farm Bureau and damages under a theory of negligence against Surhigh. That case was dismissed after the entry of an order granting summary disposition to the defendants.

Plaintiff thereafter filed the instant action against TDSG, Davies, and the Davies Estate. Plaintiff alleged that defendants were liable for Surhigh's negligence under the "Owner's Liability Statute." Plaintiff also pleaded one count of negligent entrustment against Davies, alleging he entrusted the F-150 to Surhigh without determining Surhigh's fitness to drive. The trial court granted summary disposition in defendants' favor under MCR 2.116(C)(10) as to TDSG, concluding that TDSG had no legal relationship to the accident. The trial court granted summary disposition to defendants under MCR 2.116(C)(7) as to the Davies estate, ruling that the claim was barred by the doctrine of res judicata. This appeal followed.

II. STANDARD OF REVIEW

A trial court's summary disposition ruling is reviewed de novo. *Walters v Nadell*, 481 Mich 377, 381; 751 NW2d 431 (2008). "MCR 2.116(C)(7) permits summary disposition 'because of release, payment, prior judgment, [or] immunity granted by law.' " *Clay v Doe*, 311 Mich App 359, 362; 876 NW2d 248 (2015), quoting MCR 2.116(C)(7) (alteration in original).

> A party may support a motion under MCR 2.116(C)(7) by affidavits, depositions, admissions, or other documentary evidence. If such material is submitted, it must be considered. MCR 2.116(G)(5). Moreover, the substance or content of the supporting proofs must be admissible in evidence . . . . Unlike a motion under subsection (C)(10), a movant under MCR 2.116(C)(7) is not required to file supportive material, and the opposing party need not reply with supportive material. The contents of the complaint are accepted as true unless contradicted by

[1] Compensation under the WDCA is available only to employees, and is the exclusive remedy as against the employer for an employee who is covered by it, except for an intentional tort. See MCL 418.131. The parties devote a significant portion of their briefing to the issue of whether or not plaintiff's decedent was an employee and thus whether his estate's recovery properly would have been limited to WDCA benefits. Because the res judicata issue is dispositive, we do not explore those questions.

> documentation submitted by the movant. [*Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999) (quotation marks and citations omitted).]

Furthermore,

> [w]e must consider the documentary evidence in a light most favorable to the nonmoving party for purposes of MCR 2.116(C)(7). If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. But when a relevant factual dispute does exist, summary disposition is not appropriate. [*Moraccini v City of Sterling Hts*, 296 Mich App 387, 391; 822 NW2d 799 (2012) (citations and quotation marks omitted).]

A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a complaint and is reviewed de novo. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205-206; 815 NW2d 412 (2012). This Court reviews a motion brought under MCR 2.116(C)(10) "by considering the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). Summary disposition "is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id*. "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). "Only the substantively admissible evidence actually proffered may be considered." *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 525; 773 NW2d 57 (2009) (quotation marks and citation omitted). "Circumstantial evidence can be sufficient to establish a genuine issue of material fact, but mere conjecture or speculation is insufficient." *McNeill-Marks v Midmichigan Med Ctr-Gratiot*, 316 Mich App 1, 16; 891 NW2d 528 (2016).

The moving party has the initial burden to support its claim with documentary evidence, but once the moving party has met this burden, the burden then shifts to the nonmoving party to establish that a genuine issue of material fact exists. *AFSCME v Detroit*, 267 Mich App 255, 261; 704 NW2d 712 (2005). Additionally, if the moving party demonstrates that the nonmovant lacks evidence to support an essential element of one of his or her claims, the burden shifts to the nonmovant to present sufficient evidence to dispute that fact. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016). Finally, "[t]he applicability of legal doctrines such as res judicata and collateral estoppel are questions of law to be reviewed de novo." *Allen Park Retirees Ass'n v Allen Park*, 329 Mich App 430, 443; 942 NW2d 618 (2019).

III. ANALYSIS

A. TDSG'S INVOLVEMENT IN THIS CASE

Plaintiff's first argument that the trial court erred relates to defendant's assertion that PER and TDSG were separate entities. We reject plaintiff's argument, however, because there is no evidence that TDSG had any legal relationship to the case.

Sciotti testified that TDSG was formed with Davies as a partnership. Eventually, because of pressure from a national client, TDSG was abandoned and PER was created as a limited-liability company. At the time of the accident, and contrary to plaintiff's assertion, the F-150 was insured by Farm Bureau through a policy issued to PER, not TDSG. Plaintiff presented no evidence that TDSG continued to operate, or was otherwise involved in PER's business. While it is true the F-150 was originally purchased by Davies and insured through TDSG, the insurance policy was transferred to PER well before the accident. Indeed, the certificate of insurance which plaintiff presented, which was issued to TDSG, predated the accident by more than one year and was not in effect on the date of the accident. This evidence, that TDSG had no legal relationship to the F-150 or the parties at the time of the accident, was unrebutted; thus, the trial court properly granted summary disposition to TDSG. MCR 2.116(C)(10).

B. RES JUDICATA AS TO THE DAVIES ESTATE

Plaintiff argues that the trial court erred by concluding that res judicata barred plaintiff's claim against the Davies Estate. We disagree.

Res judicata is a judicial doctrine constructed to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication." *Allen v McCurry*, 449 US 90, 94; 101 S Ct 411; 66 L Ed2d 308 (1980). The "main purpose" of res judicata "is to insure finality in a cause of action." *Rogers v Colonial Fed S & L Ass'n of Grosse Pointe Woods*, 405 Mich 607, 617; 275 NW2d 499 (1979), overruled in part on other grounds by *Al-Shimmari v Detroit Med Ctr*, 477 Mich 280; 731 NW2d 29 (2007). Michigan courts consistently apply the principle broadly in practice. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999).

This broad application encompasses claims previously litigated, as well as "every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not." *Dart v Dart*, 460 Mich 573, 586-587; 597 NW2d 82, 88 (1999). Res judicata bars a party's subsequent action if "(1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). Finally, "the burden of proving the applicability of the doctrine of res judicata is on the party asserting it." *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

As a general rule, "a summary disposition ruling is the procedural equivalent of a trial on the merits that bars relitigation on principles of res judicata." *Mable Cleary Trust v Edward-Marlah Muzyl Trust*, 262 Mich App 485, 510; 686 NW2d 770 (2004), overruled on other grounds by *Titan Ins Co v Hyten*, 491 Mich 547; 817 NW2d 562 (2012). In the Wayne County case, after plaintiff filed its motion to amend the complaint, the defendants moved for summary disposition as to plaintiff's claims against them. The trial court granted summary disposition to defendants and closed the case. Consequently, the action in Wayne Circuit Court was decided on the merits. Thus, the first requirement of res judicata has been met.

The second requirement of the doctrine of res judicata is that both actions must involve the same parties or their privies. *Adair*, 470 Mich at 121. Privies are parties "so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying

to assert." *Id*. at 122. "The outer limit of the doctrine traditionally requires both a 'substantial identity of interests' and a 'working functional relationship' in which the interests of the nonparty are presented and protected by the party in litigation." *Id*. (citation omitted).

In the Wayne County case, plaintiff sued two parties: Farm Bureau, which insured the F-150, under the policy which initially had insured TDSG and which was transferred to PER after that entity was formed; and Surhigh, the driver of the F-150 at the time of the accident. Plaintiff's theory was that the employer negligently entrusted the F-150 to Surhigh, causing the accident. Farm Bureau was in privity with PER by virtue of the insurance policy; the policy contractually obligated Farm Bureau to pay any damages incurred due to PER's acts of negligence. Thus, Farm Bureau and PER had identical interests in avoiding any liability arising from the car accident that took Baldwin's life. Stated another way, Farm Bureau's potential liability was derivative of PER's; Farm Bureau could only be liable if PER was liable, so it had the same incentive as PER to establish that PER had not acted negligently. Thus, PER and Farm Bureau were in privity by virtue of PER's insurance policy with Farm Bureau for the F-150. Similarly, by being in privity with PER, through the insurance policy issued to PER, Farm Bureau was also in privity with Davies, the owner of the vehicle. As with PER, Farm Bureau could only be held liable for acts by Davies if Davies had acted negligently; and plaintiff's theory was that Davies had acted negligently by entrusting the F-150 to Surhigh. Thus, Farm Bureau had the same interest in demonstrating that there was no negligence in allowing Surhigh to drive the F-150 as did Surhigh in the Wayne County case and the Davies Estate in the present case. Accordingly, there was privity between the Davies Estate and the defendants in the Wayne County case, which establishes the second requirement of res judicata, privity.

Finally, for the doctrine of res judicata to bar the relitigation of a claim, the matter in question must have been decided in the first case, or be one which could have been so decided. *Adair*, 470 Mich at 121. The test for this element is the "transactional" test. *Id*. at 124. The "transactional" test provides that "the assertion of different kinds or theories of relief still constitutes a single cause of action if a single group of operative facts give rise to the assertion of relief." *Id*. (citation omitted). "Whether a factual grouping constitutes a transaction for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation*, [and] whether they form a convenient trial unit . . . ." *Id*. at 125 (citation and quotation marks omitted; alterations in original). See also *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 420; 733 NW2d 755 (2007) (quoting *Adair*'s statement of the transactional test).

The claims raised in this case could have been raised in the first case, which is evidenced at least in part by the fact that plaintiff attempted to amend the Wayne County case to add the defendants in this case to that case. Plaintiff's claims against the defendants in Wayne Circuit Court related to the August 2016 accident, which is the same event that forms the basis for the claims against defendants in this case. The Wayne Circuit Court denied the motion to amend the complaint because plaintiff chose to conduct further discovery to determine whether plaintiff was an employee of PER or TDSG and thus covered by the exclusive remedy provision of the WDCA. See n 1 of this opinion. Defendants then filed a motion for summary disposition, which the Wayne Circuit Court granted. The issue of whether the exclusive remedy provision of the WDCA barred the Wayne County suit does not preclude the application of res judicata here; the same issue could be and was raised in the trial court in this case. Whether or not plaintiff had a meritorious claim

for relief in the Wayne County case, he nevertheless *could* have raised and, at least initially, sought to raise all of the present claims in that case. See *Adair*, 470 Mich at 121 (emphasis added) (res judicata applies if "the matter in the second case was, *or could have been*, resolved in the first."

Consequently, all three elements required for the application of res judicata applied. As a result, the trial court properly granted summary disposition to the Davies Estate on that basis.

IV. CONCLUSION

For the reasons stated in this opinion, the trial court's order granting summary disposition to defendants is affirmed. Defendants, as the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Jonathan Tukel
/s/ Deborah A. Servitto
/s/ Michelle M. Rick