STATE OF MICHIGAN

COURT OF APPEALS

GERALD T. SLOAN and JAMES C. SEIBERT, Plaintiffs-Appellants, v CITY OF MADISON HEIGHTS, Defendant-Appellee.	UNPUBLISHED March 21, 2013 No. 307580 Oakland Circuit Court LC No. 10-115295-CK

Before: JANSEN, P.J., and FITZGERALD and K. F. KELLY, JJ.

PER CURIAM.

Plaintiffs, who are both retired Madison Heights command officers,[1] appeal as of right the order denying their motion for summary disposition and granting summary disposition pursuant to MCR 2.116(I)(2) in favor of defendant, City of Madison Heights. We affirm.

I. FACTS AND PROCEDURAL HISTORY

Both plaintiffs retired under the terms of a master agreement between the City of Madison Heights and the Madison Heights Command Officers Association Fraternal Order of Police. Plaintiff Gerald T. Sloan retired pursuant to a Collective Bargaining Agreement (CBA) covering the period of July 1, 1984, through June 30, 1986. Plaintiff James C. Seibert retired pursuant to a CBA covering the period of July 1, 1986, through June 30, 1988. In each instance, Article XVIII of the CBA provides all command officers with lifetime health insurance benefits. At the time of plaintiffs' retirements, Section 2 of Article XVIII of the CBA provided for traditional Blue Cross/Blue Shield (BCBS) health insurance. Section 5 of Article XVIII provided that "The City shall have the right to change insurance carriers for fringe benefits provided that the employee benefits are not reduced from the present benefits."

Over the years, the city changed health insurance carriers several times for both active and retired employees. A 2006 change in insurance carriers from BCBS to MERS resulted in the filing of numerous grievances by both the Command Officers Association of Michigan (COAM) and the Police Officers Association of Michigan (POAM) that ultimately proceeded to

[1] Command officers are police officers with the rank of sergeant and above.

arbitration. COAM is the certified bargaining representative on behalf of all full time police officers of the City of Madison Heights above the rank of sergeant (command officers), excluding the Chief and Deputy Chief, and was operating under a CBA in effect from July 1, 2000, through June 30, 2008. POAM is the certified bargaining representative on behalf of all full time police officers employed by the City of Madison Heights from the rank of detective and below, and was operating under a CBA in effect from July 1, 2002, through June 30, 2008.

Section 8 of Article XVIII of the COAM agreement provided, "The City shall have the right to change insurance carriers for fringe benefits provided that the employee benefits are not reduced from the present benefits." Section 2 of Article XXV of the POAM agreement provided, "The City shall have the right to change insurance carriers for fringe benefits after July 1, 1979, provided that the employees receive similar or greater benefits with any new insurance program." One of the POAM grievances asserted that these provisions gave the city the right to change insurance carriers for employees, but not for retirees. The arbitrator disagreed. The arbitrator noted that "both Collective Bargaining Agreements[2] have provisions which allow the City to change insurance carriers for employees." The arbitrator also noted that the language in the CBA stating that "the pension terms and benefits for a retiree shall remain as defined by the Collective Bargaining Agreement in effect at the time of his/her retirement" simply defined the pension terms and benefits. The arbitrator explained:

> Such language, however, is inconspicuous by its absence as it relates to insurance carrier. If the parties had meant to freeze the particular insurance carrier in place as of the time the employee retired, they could easily have done so as they did with the pension benefits. They did not do so.
>
> Logically, it also stands to reason that a retiree would not have any greater rights than would an active employee concerning insurance carriers and insurance benefits, unless the contract language so provides. That is not the case. I do read the language of Article XXV, Section 2 of the POAM Contract to indicate that the City retained the right to change carriers once an individual retires. That language was in the contract at the time the individual retired and is part of the total bargain for that employee.

The MERS plan was short-lived, and the plan was replaced by a BCBS PPO plan. In 2009, the city changed from the BCBS PPO plan to the BCBS Medicare Advantage Plan, which required enrollment in Medicare Part B at the expense of the city.

Plaintiffs resisted the conversion to the Medicare Advantage Part B Plan in 2009 and refused to sign up for Medicare Part B, asserting that they were entitled to remain on the BCBS PPO plan and that the city could not change their insurance carrier without their consent. Being unable to force plaintiffs to sign up for Medicare Part B, the city created a custom plan known as Medicare Part A Only for those retirees unwilling to sign up for Medicare Part B.

[2] The COAM CBA and the POAM CBA.

Plaintiffs filed the present breach of contract action in which they claimed that Article XVIII, section 5 of the CBAs applied only to employee benefits and that the city had no right to unilaterally change insurance carriers for retiree benefits. Plaintiffs moved for summary disposition under MCR 2.116(C)(10). Defendant also moved for summary disposition under MCR 2.116(I)(2) on the ground that the 2007 arbitration decision established its ability to unilaterally change retiree insurance carriers and plans as a matter of res judicata and, in the alternative, that the language in the CBAs allowed that action. Following a hearing on the motions, the trial court determined that the 2007 arbitration decision is res judicata on the issue of whether the city has the unilateral right to change retiree insurance carriers. Accordingly, the trial court granted summary disposition in favor of defendant.

II. STANDARD OF REVIEW

The applicability of the doctrine of res judicata is reviewed de novo. *VanVorous v Burmeister*, 262 Mich App 467, 476; 687 NW2d 132 (2004).

III. ANALYSIS

Plaintiffs' sole argument is that the trial court erred by granting summary disposition in favor of defendants on the basis of res judicata because the 2007 arbitration involved unions that have no connection with plaintiffs and, therefore, that plaintiffs are not in privity with those unions.[3] We disagree.

The purpose of res judicata is to prevent inconsistent decisions, conserve judicial resources, and protect vindicated parties from vexatious litigation. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380; 596 NW2d 153 (1999). The elements of res judicata are: (1) the prior action was decided on the merits; (2) the prior decision was a final judgment; (3) both actions contained the same parties or those in privity with the parties; and (4) the issues presented in the subsequent case were or could have been decided in the prior case. *Stoudemire v Stoudemire*, 248 Mich App 325, 334; 639 NW2d 274 (2001).

For purposes of res judicata, parties are in privity with each other when they are "'so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert.'" *Washington v Sinai Hosp of Greater Detroit*, 478 Mich 412, 421; 733 NW2d 755 (2007), quoting *Adair v State*, 470 Mich 105, 122; 680 NW2d 386 (2004). To satisfy the same parties requirement, the litigants "to the second action need be only substantially identical to [those] in the first action, in that the rule applies to both parties and their privies." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 12; 672 NW2d 351 (2003). A finding of privity requires "a substantial identity of interests" and a "relationship in which the interests of the nonparty [were] presented and protected by the parties in the litigation." *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 214; 699 NW2d 707 (2005). "Courts have consistently held that where a union sues on behalf of represented employees the judgment

[3] This appeal does not involve the issue of whether the BCBS Medicare Advantage Plan provides fringe benefits that are "not reduced from the present benefits."

entered in that suit acts as a bar to litigation brought by an individual represented employee at a latter time, if the same cause of action is asserted and if the employees' individual interests were represented in the first action. *York v Wayne Co Sheriff*, 157 Mich App 417, 425; 403 NW2d 152 (1987); See also *Senior Accountants, Analysts & Appraisers Ass'n v Detroit*, 60 Mich App 606; 231 NW2d 479 (1975) (individual members of labor organization and labor organization itself are the same for purposes of collateral estoppel).

The arbitration in this case involved grievances filed by two unions on behalf of retired Madison Heights police officers. Plaintiffs do not dispute that their bargaining representative, the Madison Heights Command Officers Association Fraternal Order of Police, no longer exists and that COAM is the certified bargaining representative on behalf of command officers employed by City of Madison Heights. COAM and POAM, on behalf of police officers who retired between 2000 and 2008, filed grievances on behalf of retirees raising the same issues raised by plaintiffs in the present case. The grievances were based on contract language that is either identical or substantially similar to the contract language contained in plaintiffs' CBAs. Although plaintiffs' were not represented by COAM, a substantial identity of interests exists between those retirees represented by the former Madison Heights Command Officers Association Fraternal Order of Police and those retirees represented by COAM. Plaintiffs' individual interests were presented and protected by COAM in the arbitration. The unions' representation of retirees' individual interests in the arbitration renders plaintiffs in privity with the unions and retirees whose grievances were denied in the arbitration. Thus, the trial court was correct in granting summary disposition in favor of defendants on the basis of res judicata.

Affirmed.

/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly