

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY BRETZ,

Plaintiff-Appellant,

v

TITAN INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
December 4, 2003

No. 241043
Wayne Circuit Court
LC No. 01-136199-NF

Before: Murray, P.J. and Gage and Kelly, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition and denying his motion to compel payment of benefits. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Plaintiff's vehicle was struck by a vehicle driven by Kevin Manns, who is not a party to this case. Plaintiff filed suit against defendant seeking payment of personal injury protection (PIP) benefits for an injury allegedly sustained in the accident.¹ The parties reached an agreement that provided that defendant would pay plaintiff \$22,500, part of which plaintiff had already received in the form of PIP benefits, while reserving the right to file a motion for summary disposition to determine plaintiff's entitlement to future benefits. Defendant agreed that if it did not prevail on its motion it would continue paying plaintiff benefits "for such time as reasonable proof of claimant's continuing disability is presented to Defendant." Defendant did not prevail on the motion.

Plaintiff filed a third-party action against Manns and other defendants who are not parties to this case.² The jury returned a verdict of no cause of action, concluding that Manns was negligent but that plaintiff was not injured as a result of Mann's negligence. As a result of the jury's verdict, defendant stopped paying plaintiff PIP benefits.

¹ *Bretz v Titan Insurance Co.*, Wayne Circuit Court Docket No. 00-005408-NF.

² *Bretz v Manns, et al.*, Wayne County Circuit Court Docket No. 99-925429-NI.

Subsequently, plaintiff filed the instant suit seeking PIP benefits, and also filed a motion to compel defendant to pay PIP benefits. The trial court denied the motion. Plaintiff filed a second motion to compel payment of benefits, relying on *Monat v State Farm Ins Co*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2002 (Docket No. 222690). In *Monat*, the plaintiff's vehicle was struck by another vehicle. The plaintiff filed a first-party action against the defendant after the defendant stopped paying PIP benefits. The plaintiff also filed a third-party action against the driver of the other vehicle. The jury returned a verdict of no cause of action in the third-party action, finding that the plaintiff was not injured in the collision. The defendant moved for summary disposition in the first-party action, arguing that the plaintiff was collaterally estopped from asserting that he was injured in the collision because that issue was decided against him in the third-party action. In a split decision, another panel of this Court affirmed the trial court's decision denying the defendant's motion, noting that the defendant cited no cases that extended the relaxation of the mutuality requirement to the realm of insurance cases. *Id.*, slip op at 2. The dissent, citing *Lichan v American Universal Ins Co*, 435 Mich 408, 427; 459 NW2d 288 (1999), concluded that the plaintiff was collaterally estopped from relitigating the issue, even though the parties were not identical, no mutuality existed, and no traditional exceptions apply.

In response, defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing that plaintiff was collaterally estopped from asserting that he was injured in this case because that issue had been decided against him in the third-party case. The trial court held a hearing, denied plaintiff's second motion to compel payment of PIP benefits, and granted defendant's motion for summary disposition. The trial court emphasized that the jury in the third-party case found that plaintiff was not injured in the accident. The trial court also expressed disagreement with the majority decision in *Monat, supra*.

II. Standard of Review

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior action culminated in a valid final judgment and the issue was actually and necessarily litigated in that action. *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). In the subsequent action, the ultimate issue to be determined must be identical and not merely similar to that involved in the first action. *Eaton County Rd Comm'rs v Schultz*, 205 Mich App 371, 376; 521 NW2d 847 (1994). To be actually litigated, a question must be put into issue by the pleadings, submitted to the trier of fact, and determined by the trier. *VanDeventer v Michigan National Bank*, 172 Mich App 456, 463; 432 NW2d 338 (1988). The parties must have had a full and fair opportunity to litigate the issue in the first action. *Kowatch v Kowatch*, 179 Mich App 163, 168; 445 NW2d 808 (1989). Mutuality of estoppel is generally a necessary element of collateral estoppel. *Minicuci v Scientific Data Mgmt, Inc*, 243 Mich App 28, 33; 620 NW2d 657 (2000). We review the applicability of the doctrine of collateral estoppel de novo. *Id.*, 34.

III. Analysis

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition and denying his motion to compel payment of PIP benefits. We disagree.

The agreement reached by the parties in the first-party action provided that defendant would continue to pay PIP benefits to plaintiff as long as it had reasonable proof that plaintiff was disabled. The trial court noted that the parties disagreed as to whether plaintiff was disabled as a result of the accident, and observed that that issue had been resolved in the third-party case when the jury specifically found that plaintiff was not injured in the accident. The issue of whether plaintiff sustained an injury in the accident was put into issue in the third-party action, submitted to the jury, and determined by the jury. *VanDeventer, supra*. The finding that plaintiff was not injured in the accident constituted reasonable proof that he was not disabled as a result of the accident. The issue was fully and fairly litigated in the third-party action. *Kowatch, supra*. The trial court correctly found that the doctrine of collateral estoppel precluded the relitigation of this issue in the instant case, *Ditmore, supra*, and properly granted defendant's motion for summary disposition. Plaintiff has not shown that the trial court's reasoning was erroneous.³ *Watson v Bureau of State Lottery*, 224 Mich App 639, 648; 569 NW2d 878 (1997).

Affirmed.

/s/ Christopher M. Murray

/s/ Hilda R. Gage

/s/ Kirsten Frank Kelly

³ The trial court did not err by declining to rely on the majority decision in *Monat, supra*. MCR 7.215(C)(1). *Monat* has no precedential effect on this Court pursuant to MCR 7.215(I)(1). We also note that our Supreme Court has granted leave to appeal in *Monat, supra*. Plaintiff also failed to attach a copy of *Monat* as required by MCR 7.215(C)(1).