STATE OF MICHIGAN

COURT OF APPEALS

CITIZENS INSURANCE COMPANY OF AMERICA,

Plaintiff-Appellant,

v

NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH,

Defendant-Appellee,

and

21ST CENTURY NORTH AMERICAN INSURANCE COMPANY, and AMERICAN INTERNATIONAL INSURANCE COMPANY,

Defendants.

UNPUBLISHED
April 22, 2014

No. 313827
Wayne Circuit Court
LC No. 12-004225-NF

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Citizens Insurance Company of America (Citizens Insurance), appeals as of right the trial court's order granting the motion of defendant, National Union Fire Insurance Company of Pittsburgh (National Union), for summary disposition under MCR 2.116(C)(7). The trial court ruled that res judicata barred Citizens Insurance's claim for reimbursement of no-fault benefits against National Union. We affirm.

I. FACTS

According to the complaint, Ruth Russell was injured in a motor vehicle accident on September 10, 1983. She filed a complaint against American Motors Corporation, National Union, and the Insurance Company of North America on September 10, 1984, seeking personal injury protection benefits.

On April 28, 1987, the trial court entered a consent judgment. In the consent judgment, American Motors agreed to pay Russell's benefits, and the trial court dismissed National Union and Insurance Company of North America with prejudice. The parties agreed that the consent

judgment would remain in place for 10 years. The parties renewed the consent judgment for additional 10-year terms in 1997 and 2007.

Chrysler Motors later purchased American Motors. When Chrysler Motors filed for bankruptcy, the Assigned Claims Facility assigned Russell's claim to Citizens Insurance. In March 2012, Citizens Insurance filed its complaint in this case against National Union. Citizens Insurance asserted that National Union is a higher priority insurer and, therefore, National Union must reimburse Citizens Insurance for Russell's benefits.

National Union moved for summary disposition under MCR 2.116(C)(7), asserting that res judicata barred Citizens Insurance's suit against National Union. The trial court agreed and granted National Union's motion. It reasoned that Citizens Insurance was "stand[ing] in Chrysler's shoes." According to the trial court, Citizens Insurance's claim was "derivative in terms of how [Citizens Insurance] got it through Chrysler. . . . [Y]ou're a successor, because but for Chrysler's bankruptcy you would not be involved at all." The trial court also reasoned that Citizens Insurance could seek reimbursement only if National Union was "financially responsible," but the consent judgment determined that National Union was not financially responsible for Russell's injuries. Thus, the trial court concluded that res judicata barred Citizens Insurance's claim because the litigation would involve the same parties or their privies and legal issues were the same as those that the parties' consent judgment determined.

II. RES JUDICATA

A. STANDARD OF REVIEW

This Court reviews de novo the trial court's determination on a motion for summary disposition.[1] We also review de novo whether res judicata bars a subsequent suit.[2]

A defendant is entitled to summary disposition under MCR 2.116(C)(7) if the plaintiff's claims are barred because of res judicata.[3] When reviewing a motion under MCR 2.116(C)(7), this Court considers the contents of the plaintiff's complaint to be true, unless it is contradicted by the documentary evidence.[4] If reasonable minds could not differ on the legal effects of the facts, whether summary disposition is appropriate is a question of law.[5]

---

[1] *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

[2] *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999).

[3] *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). See *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 396; 509 NW2d 829 (1993).

[4] *Odom*, 482 Mich at 466.

[5] *Snead v John Carlo, Inc*, 294 Mich App 343, 354; 813 NW2d 294 (2011).

B. LEGAL STANDARDS

The doctrine of res judicata "prevents[s] multiple suits litigating the same cause of action."[6] Res judicata bars actions where "(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."[7] The purposes of res judicata is to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."[8]

C. SAME PARTIES OR THEIR PRIVIES

Citizens Insurance asserts that the trial court erred when it found that Citizens Insurance is a privy of Russell. National Union responds that the trial court properly determined that Citizens Insurance is a privy of Russell. The parties appear to be confused about the basis of the trial court's decision. The trial court determined that Citizens Insurance is a privy of *Chrysler Motors*, not that Citizens Insurance is a privy of Russell. We conclude that its determination was proper.

Parties are privies if one party's interest is "so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert."[9] Privity 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 the litigation."[10]

Here, the original consent judgment was between Russell and American Motors. Chrysler Motors later purchased American Motors. Chrysler Motors went bankrupt, and the Assigned Claims Facility assigned Russell's claim to Citizens Insurance. There is a substantial identity of interests between Chrysler Motors and Citizens Insurance because Citizens Insurance is the direct descendant of the original insurer in this case, effectively "standing in the shoes" of Chrysler Motors and, in turn, American Motors. There is no indication in the complaint or the record that American Motors failed to sufficiently present and protect the insurer's interests in the original litigation between Russell and the insurance companies.

We emphasize that this is not a case in which the *insured* released the defaulting insurer from financial responsibility. If Russell alone had released National Union from financial responsibility, there would be no res judicata issue because Citizens Insurance, the insurer, and Russell, the insured, do not have a substantial identity of interests. The interests of the insured and insurer are often at odds, and thus the first element of res judicata would not be met.

---

[6] *Adair*, 470 Mich at 121.

[7] *Id.*

[8] *Pierson Sand & Gravel, Inc*, 460 Mich at 380 (quotation marks and citations omitted).

[9] *Adair*, 470 Mich at 122.

[10] *Id.*

However, that is not what the trial court found in this case. It found that Citizens Insurance was in privy with Chrysler Motors, not with Russell.

We conclude that the trial court did not err when it determined that Citizens Insurance was a privy to the original consent judgment.

D. LEGAL ISSUES DETERMINED

Citizens Insurance asserts that the consent judgment did not determine the same legal issues because Citizens Insurance's action did not accrue until it received the claim from the Assigned Claims Facility. National Union responds that the consent judgment determined the ultimate matter for resolution in this case—whether it is liable for no fault benefits. We conclude that the trial court properly determined that this suit involves the same legal issue as the consent judgment decided.

The doctrine of res judicata applies to consent judgments.[11] "Res judicata bars every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not."[12] Claims arise from the same transaction if they concern identical evidence or essential facts.[13]

Citizens Insurance asserts that the matter could not have been resolved in the first case because MCL 500.3172 provides it, as the assigned claims insurer, an independent statutory right to recover from National Union. Clearly, the assigned claims insurer can bring several claims against defaulting insurers that the original insurer could not have because the assigned claims plan is, by definition, a lower priority insurer than the original insurer. However, the assigned claims insurer may only bring claims for reimbursement from defaulting insurers "to the extent of their financial responsibility."[14]

MCL 500.3172 thus requires the trial court to determine whether the party from whom the plaintiff seeks reimbursement is "financially responsible." In other words, the essential factual determination here would be whether National Union is financially responsible for Russell's injury. If National Union is not financially responsible for Russell's injury, Citizens Insurance may not seek reimbursement from National Union.

In Russell's original action, American Motors *could have* asserted that National Union was at least partially responsible for Russell's claim and was therefore financially responsible for some part of her no-fault benefits. However, the consent judgment that American Motors signed dismissed National Union with prejudice and prevented American Motors from asserting *any* claims against National Union. In other words, the consent judgment precluded American

---

[11] See *Schwartz v City of Flint*, 187 Mich App 191, 193-194; 466 NW2d 357 (1991)

[12] *Adair*, 470 Mich at 123.

[13] *Id.*; *Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999).

[14] MCL 500.3172.

Motors from asserting that National Union was financially responsible for Russell's care. Therefore, the consent judgment involved the same transaction because the parties could have, but did not, litigate National Union's financial responsibility for Russell's injuries.

We conclude that the trial court did not err when it concluded that Citizens Insurance's claim concerns identical essential facts that the parties' consent judgment previously determined.

III. CONCLUSION

We conclude that the trial court did not err when it determined that res judicata barred Citizens Insurance's claim against National Union on the basis of a consent judgment to which Citizens Insurance's predecessor and National Union were parties.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly