

STATE OF MICHIGAN
COURT OF APPEALS

VILENE MACRURY

Plaintiff-Appellant,

v

AMERICAN STEAMSHIP COMPANY,

Defendant-Appellee.

UNPUBLISHED

December 13, 1996

No. 189390

Wayne Circuit Court

LC No. 95-512744 NO

Before: Jansen, P.J., and Saad and M.D. Schwartz,* JJ.

PER CURIAM.

Plaintiff, Vilene MacRury, appeals by right a September 7, 1995, order granting summary disposition in favor of defendant, American Steamship Company, entered by the Wayne Circuit Court. We affirm.

Plaintiff argues on appeal that the trial court erred in granting summary disposition on the basis that plaintiff's claims were barred by res judicata. We agree with plaintiff on this issue, but nevertheless affirm the trial court's decision on the ground that plaintiff's claim is barred by release.

We review a trial court's grant of summary disposition de novo. *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 551; 540 NW2d 743 (1995). MCR 2.116(C)(7) is the proper ground upon which to grant summary disposition on the basis of res judicata. See *Wilson v Knight-Ridder Newspapers, Inc*, 190 Mich App 277, 278-279; 475 NW2d 388 (1991). In reviewing a motion for summary disposition under MCR 2.116(C)(7), this Court must accept plaintiff's well-pleaded allegations as true and construe them most favorably to the plaintiff. *Jones v State Farm Ins Co*, 202 Mich App 393, 396; 509 NW2d 829 (1993). In addition, this Court must consider the pleadings, affidavits, depositions, admissions, and other documentary evidence to determine whether the claim is barred as a matter of law. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996). Summary disposition based on res judicata is improper if material facts are in dispute to the

* Circuit judge, sitting on the Court of Appeals by assignment.

extent that further factual development could provide a basis for recovery. *Huron Tool v Precision Consult*, 209 Mich App 365, 377; 532 NW2d 541 (1995); *Jones, supra*, at 397.

In order for a claim to be barred by res judicata, the following conditions must be satisfied: (1) the first action was decided on the merits; (2) the matter contested in the second action was already resolved in the first; and (3) both actions involve the same parties or their privies. *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 375-376; 521 NW2d 847 (1994). Additionally, Michigan has adopted the "broad" application of res judicata, which bars claims arising out of the same transaction that could have been resolved in the first action but were not. *Jones, supra*, at 401.

Upon review of the record below, we find that plaintiff has presented some evidence to support her claim that she has suffered two separate and distinct injuries, that this evidence raises a genuine issue of material fact, and that summary disposition based on res judicata was therefore inappropriate.

Plaintiff argues that the federal court action arose from injuries sustained on April 7, 1991, that went on to complete healing, while the present action arose from "injuries suffered as a result of having to continually engage in strenuous, heavy, and arduous physical activity on May 16, 1992 and for a period of time prior thereto." In support of that claim, plaintiff relies almost exclusively on a letter, dated February 6, 1995, from Gary Doss, D.O., stating that, in his opinion, "the first injury went on to complete healing," and that the alleged May 1992 injury "is not related to the first pathology that was treated in 1991."

Although we believe that Dr. Doss' letter was sufficient to create a genuine factual dispute as to the existence of two separate and distinct injuries, and that this therefore precluded summary disposition based on res judicata, we nonetheless conclude that plaintiff's claim is barred by release.

Defendant did not argue the release as a separate issue on appeal, nor did the trial court rely on it in making its decision. Rather, defendant treated the release and res judicata arguments as being parallel. However, because defendant did cite the release in its motion for summary disposition as an alternate ground for dismissal of plaintiff's case, and referred to it during the hearing on the motion, we believe that the issue may be properly reviewed on appeal. *Brown v Drake-Willock Int'l*, 209 Mich App 136, 143; 530 NW2d 510 (1996).

Settlement agreements are considered by this Court to be contracts, and are to be construed and applied accordingly. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Additionally, the interpretation of unambiguous and unequivocal contracts is a question of law. *G&A Inc v Nahra*, 204 Mich App 329, 330; 514 NW2d 255 (1994); *In re Loose*, 201 Mich App 361, 366; 505 NW2d 922 (1993). When construing a release, this Court must ascertain the intent of the parties as it is expressed in the release. *Gramer, supra*, at 125; *Rodriguez v Solar of Mich, Inc*, 191 Mich App 483, 496; 478 NW2d 914 (1991). "The scope of a release is governed by its terms." *Cordova Chemical Co v DNR*, 212 Mich App 144, 150; 536 NW2d 860 (1995). Finally, "contractual language is given its ordinary and plain meaning, and technical and constrained constructions are avoided." *G&A Inc, supra*, at 331.

We find that the clear contractual language of the release in the present case indicates that it was intended by the parties to settle all claims arising out of plaintiff's employment. The relevant portion of the "RELEASE AND SETTLEMENT AGREEMENT OF VILENE MACRURY" reads as follows:

I do hereby release and forever discharge the American Steamship Company . . . of and from all claims, demands, damages, actions or causes of action, on account of or arising out of my aforesaid employment and any injuries resulting therefrom which occurred on or about April 7, 1991 (second emphasis added).

A plain reading of the phrase "out of my aforesaid employment," in light of the fact that plaintiff was no longer employed with defendant at the time the release was entered into, clearly supports this construction of the agreement.

Therefore, we find that the trial court erred in granting defendant's motion for summary disposition based on res judicata. However, we affirm the trial court's decision on the basis that plaintiff's claim is barred by release.

Affirmed.

/s/ Kathleen Jansen

/s/ Henry William Saad

/s/ Michael D. Schwartz