

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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The estate of GARY LEE PURDY, by and through  
personal representative SHIRLEY PURDY,

UNPUBLISHED  
February 4, 1997

Plaintiff-Appellant,

v

No. 190310

RIAL NEWLAND and CITY OF ADRIAN,

Lenawee Circuit Court  
LC No. 95-006428

Defendants-Appellees.

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Before: Doctoroff, P.J., and Hood and Paul J. Sullivan,\* JJ.

PER CURIAM.

Plaintiff, Shirley Purdy, personal representative of the estate of Gary Lee Purdy, appeals by right from an October 23, 1995, order granting summary disposition in favor of defendants, Rial Newland and the City of Adrian. We affirm.

The facts of this case are briefly as follows. Plaintiff filed suit in federal district court alleging that defendant Newland's failure to administer CPR on Gary Purdy constituted deliberate indifference and therefore violated his civil rights. Plaintiff also sued Newland's employer, defendant City of Adrian, under a theory of respondeat superior. The federal district court granted defendants' motion for summary judgment and denied plaintiff's oral motion to amend the complaint. The dismissal was upheld by the United States Court of Appeals for the Sixth Circuit in an unpublished opinion. Thereafter, plaintiff filed the instant case in Lenawee Circuit Court, alleging that defendant Newland's conduct was grossly negligent and that it resulted in Gary Purdy's wrongful death. The trial court granted summary disposition to defendants on the grounds of res judicata, collateral estoppel, and the statute of limitations.

On appeal, plaintiff claims only that the trial court erred in dismissing her state claim on the basis of collateral estoppel. We agree, but nevertheless affirm the trial court's grant of summary disposition on the alternate ground of res judicata.

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

A trial court's decision to grant summary disposition is reviewed de novo. *Husted v Auto-Owners Ins Co*, 213 Mich App 547, 551; 540 NW2d 743 (1995). Summary disposition on the basis of collateral estoppel or res judicata is properly considered under MCR 2.116(C)(7). *Lichon v American Ins Co*, 435 Mich 408, 427 n 14; 459 NW2d 288 (1990). 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); *Jones, supra* at 396-397.

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in the prior proceeding. *City of Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990); *Schlumm v O'Hagan*, 173 Mich App 345, 354; 433 NW2d 839 (1988). In order for collateral estoppel to apply, the ultimate issue in the second action must be the same as that in the first. *Qualls, supra*. Moreover, the issue must have been essential to the resulting judgment in the first action. *Id.* "Collateral estoppel applies only where the basis of the prior judgment can be ascertained clearly, definitely, and unequivocally." *People v Gates*, 434 Mich 146, 158; 452 NW2d 627 (1990).

In order to maintain plaintiff's state cause of action, plaintiff had to overcome governmental immunity by proving that defendant Newland's conduct rose to the level of gross negligence. MCL 691.1407(2)(c); MSA 3.996(107)(2)(c); *Harrison v Director of Dep't of Corrections*, 194 Mich App 446, 451; 487 NW2d 799 (1992). Thus, the ultimate issue was whether defendant Newland was grossly negligent. Based on a review of the record in this case, we are unable to ascertain "clearly, definitely, and unequivocally" whether the issue of defendant Newland's alleged gross negligence was essential to the judgment in the prior federal court action. *Gates, supra*. Hence, we conclude that summary disposition based on collateral estoppel was inappropriate. *Vutci v Indianapolis Life*, 157 Mich App 429, 441; 403 NW2d 157 (1987); *Gates, supra*.

However, the trial court's grant of summary disposition was also based on the application of res judicata. Plaintiff has failed to address this basis of the trial court's decision, an issue which would necessarily have to be reached in order for plaintiff to obtain the relief sought. Therefore, we would ordinarily deem the issue abandoned and accordingly uphold the trial court's decision without further review. *Roberts & Son v NODC*, 163 Mich App 109, 113; 413 NW2d 744 (1987). However, because collateral estoppel and res judicata are related doctrines, and because the general issue was preserved, we will briefly review the res judicata question as an alternative rationale. See *Goodridge v Ypsilanti Twp Bd*, 209 Mich App 344, 351; 529 NW2d 665 (1995), rev'd on other grounds 451 Mich 446 (1996). We conclude that no reversible error was committed because plaintiff's state claim was barred by res judicata.

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 resolved in the first; and (3) both actions involve the same parties or their privies. *Eaton County Road 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. "The test for determining whether two claims arise out of the same transaction and are identical for res judicata purposes is whether the same facts or evidence are essential to the maintenance of the two actions." *Id.*

Based on a review of the record, we find that plaintiff's federal and state claims arose out of the same transaction, therefore invoking the application of res judicata. Both lawsuits involved defendant Newland's alleged failure to administer CPR, and in both cases plaintiff cites the same alleged admissions in defendant Newland's report as evidence of his wrongful conduct. Hence, the identical facts and evidence were essential to maintaining both actions. The "broad" application of res judicata is appropriate in cases such as this one, "where the plaintiff has received a physical or pecuniary injury as the result of a single incident and has then attempted to raise different theories of recovery in separate actions." *Vutci, supra* at 438-439. Therefore, the trial court properly granted defendant's motion for summary disposition based on the prior dismissal of the federal court claim. See *Carter v SEMTA*, 135 Mich App 261, 263-266; 351 NW2d 920 (1984). In light of our decision to affirm on the basis of res judicata, we need not review defendants' statute of limitations argument.

We note that plaintiff also briefly asserts that defendants waived plaintiff's nonjoinder of the federal and state claims by failing to object in federal court. However, plaintiff did not raise this issue before the trial court, and thus, this Court will not review it. *Providence Hospital v Labor Fund*, 162 Mich App 191, 194; 412 NW2d 690 (1987). Manifest injustice will not result in our failure to review this issue. *Id.*

Affirmed.

/s/ Martin M. Doctoroff

/s/ Harold Hood

/s/ Paul J. Sullivan