

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR LAUDERDALE,

Plaintiff-Appellant,

v

DETROIT GENERAL RETIREMENT SYSTEM, and
CITY OF DETROIT,

Defendants-Appellees.

UNPUBLISHED

July 25, 1997

No. 195662

Wayne Circuit Court

LC No. 96-601959-CZ

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, J.J.

PER CURIAM.

Plaintiff appeals as of right the order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse and find that plaintiff was entitled to summary disposition pursuant to MCR 2.116(C)(7).

Beginning in 1979, plaintiff was employed by the City of Detroit as a bus mechanic. On December 5, 1989, while at work, plaintiff injured his right thumb. Plaintiff asserts that this injury was not disabling at that time, but that he became disabled due to hypertension and/or a heart disorder on April 10, 1990. In February 1992, plaintiff had surgery on his right thumb. The surgery was unsuccessful and resulted in a permanent disablement of plaintiff's thumb. In July 1993, defendant General Retirement System (GRS), which was established by the City of Detroit charter for the purpose of providing retirement and death benefits for employees of the City of Detroit, began making monthly \$475 duty disability pension payments to plaintiff. Although defendants assert that the duty disability benefits were based only on plaintiff's thumb injury, plaintiff argues that the benefits were based on his hypertension/heart condition.

In October 1993, the Bureau of Worker's Disability Compensation determined that plaintiff was disabled due to the work-related thumb injury, and ordered that the City of Detroit pay plaintiff \$421.22 per week, retroactive to December 1989. The order of the worker's compensation bureau further stated that "Defendant [City of Detroit] shall not coordinate the duty disability pension being received by plaintiff pursuant to MCL 418.354(14)." However, when GRS discovered that plaintiff

was receiving both worker's compensation benefits and duty disability pension benefits for the thumb injury, it determined that plaintiff's benefits were subject to coordination pursuant to MCL 418.354(14); MSA 17.237(354)(14). GRS informed plaintiff that it was entitled to recover \$2,850 in pension benefits paid to him and, in February 1995, began deducting \$100 from each of plaintiff's monthly retirement checks.

Plaintiff filed the instant action against defendants, arguing that the deductions were improper because his benefits were not subject to coordination. Essentially, plaintiff sought enforcement of his worker's compensation award, which prohibited the coordination of his benefits. GRS moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). The City of Detroit moved for summary disposition pursuant to MCR 2.116(C)(4), (7), (8), and (10). Defendants argued that no genuine issue of material fact existed, because plaintiff's worker's compensation benefits were subject to coordination with his duty disability benefits pursuant to MCL 418.354(14); MSA 17.237(354)(14). See *Drouillard v Stroh Brewery Co*, 449 Mich 293, 299-300; 536 NW2d 530 (1995). The trial court granted summary disposition in favor of defendants pursuant to MCR 2.116(C)(10), on the ground that coordination of plaintiff's benefits was permissible under MCL 418.354(14); MSA 17.237(354)(14). However, we find that the trial court erred by considering whether plaintiff's benefits were subject to coordination pursuant to MCL 418.354(14); MSA 17.237(354)(14), where the worker's compensation bureau already determined the issue, and relitigation of the issue was barred by collateral estoppel.

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties or their privies where the prior proceedings resulted in a valid and final judgment and the issue was actually litigated and necessarily determined. *Nummer v Department of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995); *Williams v Logan*, 184 Mich App 472, 477-478; 459 NW2d 62 (1990). The elements of collateral estoppel exist in the instant case and preclude relitigation of the coordination issue.

First, the coordination of plaintiff's worker's compensation benefits with his duty disability pension benefits was raised as an issue in both the worker's compensation action and the instant case. Second, both actions involved the same parties or their privies. While there is no prevailing definition of privy, it has been defined as "a person so identified in interest with another that he or she represents the same legal right." *Viele v DCMA*, 167 Mich App 571, 580; 423 NW2d 270, modified 431 Mich 898; 432 NW2d 171 (1988). Because GRS was established as the retirement system for the City of Detroit, and because GRS's payment of benefits is dependent on the City of Detroit's liability for the benefits, we find that the City of Detroit represents the same legal right as GRS. Therefore, GRS was a privy of the City of Detroit with respect to the worker's compensation action. Furthermore, it follows that, because all parties in the instant action are bound by the worker's compensation award, mutuality of estoppel existed in the instant case. *Stolaruk Corp v Department of Transportation*, 114 Mich App 357, 362; 319 NW2d 581 (1982). Third, it is clear that the worker's compensation action resulted in a valid and final judgment. Fourth, the coordination issue was actually litigated in the worker's compensation proceeding. To be actually litigated, a question must have been put into issue by the pleadings, submitted to the trier of fact, and determined by the trier of fact. *VanDeventer v*

Michigan National Bank, 172 Mich App 456, 463; 432 NW2d 338 (1988). Plaintiff's application for worker's compensation benefits necessarily raised the issue of coordination, and it is clear from the magistrate's order awarding benefits that the magistrate determined the issue. Finally, the coordination issue was necessarily determined in the worker's compensation action. To be necessarily determined in the

first action, the issue must have been essential to the resulting judgment. *People v Gates*, 434 Mich 146, 158; 452 NW2d 627 (1990). The magistrate's determination of the coordination issue was necessary to a full and complete determination of plaintiff's entitlement to worker's compensation benefits.

However, even where the elements of collateral estoppel are established, the doctrine will not be applied where its application would contravene an overriding public policy or result in manifest injustice. *Storey v Meijer, Inc*, 431 Mich 368, 377 n 9; 429 NW2d 169 (1988); *Horn v Department of Corrections*, 216 Mich App 58, 64; 548 NW2d 660 (1996). We find that application of collateral estoppel to a worker's compensation magistrate's determination that an employee's benefits are not subject to coordination pursuant to MCL 418.354(14); MSA 17.237(354)(14) is not contrary to public policy. The intent of the Worker's Disability Compensation Act is to provide employees with a remedy that is both expeditious and independent of proof of fault, while also providing employers with limited and determinate liability. *Simkins v General Motors Corp*, 453 Mich 703, 710-712; 556 NW2d 839 (1996). Application of collateral estoppel under the facts of the instant case furthers such an intent by giving the employee a definite determination of the compensation to which he is entitled, and giving the employer a definite determination of its liability, without fear that such determinations will change in subsequent litigation. Furthermore, we do not believe the application of collateral estoppel to the magistrate's decision regarding coordination will result in manifest injustice where the City of Detroit had the opportunity to appeal the magistrate's decision to the worker's compensation appellate commission pursuant to MCL 418.859a; MSA 17.237(859a), but failed to do so.

Accordingly, we find that relitigation of the coordination issue was barred by collateral estoppel. We therefore reverse the trial court's grant of summary disposition in favor of defendants pursuant to MCR 2.116(C)(10) and determine that summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(7) is appropriate. Because we find that plaintiff is entitled to summary disposition, we need not address his remaining claim that the trial court erred in denying his motion to amend his complaint.

Reversed and remanded for entry of judgment in favor of plaintiff.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Roman S. Gibbs