STATE OF MICHIGAN

COURT OF APPEALS

MARY GRISLAK,

Plaintiff-Appellant,

v

CHARLES CLINARD and JUNE CLINARD,

Defendants-Appellees.

UNPUBLISHED
March 17, 1998

No. 194349
Oakland Circuit Court
LC No. 95-499424 NO

Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals as of right from a trial court order granting defendants' motion for summary disposition in this slip and fall negligence action. We affirm.

In a prior action, plaintiff sued an insurance agency after she fell on a step at the agency's business. Summary disposition was granted in favor of the insurance agency, and this Court affirmed that decision on the basis of the open and obvious danger doctrine. *Grislak v Cameron*, unpublished order of the Court of Appeals, entered February 14, 1997 (No. 187687). While that suit was pending, plaintiff filed this action against defendants after the trial court refused to allow plaintiff to add defendants as parties to the suit. Defendants moved for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10), asserting that the action was barred by the prior judgment in the first suit and that the step was an open and obvious condition of the property. The trial court found that the prior judgment established the law of the case and granted defendants' motion for summary disposition.

On appeal, an order granting or denying summary disposition is reviewed de novo. *Mallard v Hoffinger Industries, Inc (On Remand)*, 222 Mich App 137, 140; 564 NW2d 74 (1997). Although the law of the case doctrine was improperly applied to this case, we conclude that this action is barred by the doctrines of res judicata and collateral estoppel.

Plaintiff argues that the trial court erred in ruling that there was no issue of fact as to whether the step which caused plaintiff's fall was open and obvious, in ruling that there is no duty to warn or protect business invitees of open and obvious dangers, and in denying plaintiff's motion to amend her complaint to add defendants on the basis of its conclusion that an amendment would be futile. However, these

issues were not the basis for the trial court's grant of summary disposition in this case and may not be addressed in this appeal. The only issue properly before this Court is whether the trial court correctly found that the prior judgment established the law of the case in granting defendants' motion for summary disposition.

The law of the case doctrine provides that a ruling by an appellate court with regard to a particular issue binds the appellate court and all lower tribunals with respect to that issue. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). Thus, a question of law decided by an appellate court will not be decided differently on remand or in a subsequent appeal in the same case. *Id.* Although the same issue was before the trial court in plaintiff's prior suit against the insurance agency, the law of the case doctrine was improperly applied here because the trial court was applying the ruling of another trial court (rather than the ruling of an appellate court) and the ruling was not a ruling in the same case. Nevertheless, summary disposition in favor of defendants is warranted under the doctrines of res judicata or collateral estoppel. This Court will not reverse the trial court's decision where the right result is reached for the wrong reason. *Phinney v Perlmutter*, 222 Mich App 513, 532; 564 NW2d 532 (1997).

Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. *Dart v Dart*, 224 Mich App 146, 156; 568 NW2d 353 (1997). A second action is barred when: (1) the first action was decided on the merits; (2) the matter contested in the second action was or could have been resolved in the first; and (3) both actions involve the same parties or their privies. *Id.* Michigan has adopted a broad application of the doctrine of res judicata, barring not only claims actually litigated in the prior action, but every claim arising out of the same transaction that the parties, exercising reasonable diligence, could have raised but did not. *Id.*

Plaintiff's prior action against the insurance agency and the instant action involve whether the step upon which plaintiff fell was an open and obvious condition of the property. The action against the insurance agency was summarily dismissed under the open and obvious doctrine. Plaintiff moved to amend her complaint in that action to add defendants as owners of the property, but the trial court ruled that such an amendment would be futile because of the applicability of the open and obvious doctrine to both the property owners and the tenant insurance agency. Because plaintiff's suit against the insurance agency was decided on the merits, the matter contested in the instant action was or could have been resolved in the first action, and both actions involve the same parties or their privies, this action is barred by res judicata.[1]

This action is also barred by the doctrine of collateral estoppel. 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 litigated. *Hawkins v Murphy*, 222 Mich App 664, 671-672; 565 NW2d 674 (1997). For collateral estoppel to apply, the parties in the second action must be the same as, or in privity to, the parties in the first action. *Duncan v State Hwy Comm*, 147 Mich App 267, 270; 382 NW2d 762 (1985). The instant action involves parties in privity to a party in plaintiff's action

against the insurance agency and the same issue as in that action. Because the open and obvious danger issue was adjudicated in the prior action, plaintiff is barred from relitigating the issue.

Affirmed.

/s/ Gary R. McDonald
/s/ Peter D. O'Connell
/s/ Michael R. Smolenski

[1] Privity has been defined as "mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right." *Sloan v Madison Heights*, 425 Mich 288, 295; 389 NW2d 418 (1986). A privy has also been defined as one who, after the judgment is rendered, acquires an interest in the subject matter affected by the judgment through or under one of the parties, as by inheritance, succession or purchase. *Id.* at 295-296. The insurance agency, as the tenant of the property, was in privity with defendants, owners of the property, with regard to whether the step which caused plaintiff's fall was an open and obvious condition of the property. See Black's Law Dictionary 626 (5th ed) (the lessee is in privity with the lessor).