

STATE OF MICHIGAN
COURT OF APPEALS

HASTINGS MUTUAL INSURANCE
COMPANY,

Plaintiff-Appellant,

v

DALE HUDICK,

Defendant-Appellee.

UNPUBLISHED
June 21, 2005

No. 253239
Wayne Circuit Court
LC No. 03-321848-NZ

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right an order denying its summary disposition motion and granting summary disposition in favor of defendant based on the defenses of res judicata, collateral estoppel, statute of limitations, laches, and unclean hands. We affirm.

Plaintiff argues that res judicata does not bar the present action because the subject matter of the present action was not resolved on the merits or actually determined in the first action. We disagree. The applicability of res judicata is a question of law, which is reviewed de novo on appeal. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004); *Minicuci v Scientific Data Mgt, Inc*, 243 Mich App 28, 34; 620 NW2d 657 (2000). A trial court's decision regarding whether a claim is barred pursuant to MCR 2.116(C)(7) is reviewed de novo.¹ *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001). When considering a motion under this subrule, the court may consider affidavits, depositions, admissions, and other documentary

¹ Defendant's motion did not specify under which subrule he was seeking summary disposition, and the trial court, likewise, did not specify any particular subrule under which it granted summary disposition. However, defendant argued in his motion that summary disposition was proper, in part, based on res judicata and collateral estoppel, and the trial court stated that it was granting the motion on these grounds. The trial court's ruling also indicates that its disposition was based on the remainder of defenses set forth in defendant's motion for summary disposition, including the statute of limitations, laches, and unclean hands, although it did not list them all by name. Neither party disputes that the trial court's disposition was based on all of defendant's articulated defenses.

evidence, construing them in a light most favorable to the nonmoving party, to determine whether the claim is barred. MCR 2.116(C)(7); *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998).

Res judicata bars multiple suits between the same parties regarding the same cause of action. *Adair, supra* at 121; *Sewell v Clean Cut Mgt, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Res judicata requires that: (1) the prior action was decided on the merits; (2) the decree in the prior action was a final decision; (3) the matter contested in the second case was or could have been resolved in the first; and (4) both actions involved the same parties or their privies. *Baraga Co v State Tax Comm*, 466 Mich 264, 269; 645 NW2d 13 (2002).

There is no dispute that the prior action involved the same parties, was decided on the merits, and resulted in a final judgment. Our Supreme Court has employed a broad approach to res judicata, holding that it bars litigation in the second action not only of those claims actually litigated in the first action, but also of claims arising out of the same transaction which the parties, exercising reasonable diligence, could have litigated but did not. *Adair, supra* at 121, 124. “Whether a factual grouping constitutes a “transaction” for purposes of res judicata is to be determined pragmatically, by considering whether the facts are related in *time, space, origin or motivation*, [and] whether they form a convenient trial unit” *Id.* at 125. A second proceeding, however, is not barred if there are changed or new facts, or a change in law. *Labor Council, Michigan Fraternal Order of Police v Detroit*, 207 Mich App 606, 608; 525 NW2d 509 (1994).

Defendant, the plaintiff in the underlying action, initiated the first action to recover no-fault benefits from plaintiff, the defendant and insurer with first-party liability in the underlying action, after plaintiff denied payment for defendant’s hospital expenses. The subject matter of the first action was whether defendant was entitled to receive payment for medical expenses from plaintiff under the no-fault act.² The record indicates that defendant requested payment from plaintiff in May 1998 in the amount of \$182,518.41, and claimed the total was \$195,658.90 at the time of his complaint. After the trial court ruled in favor of defendant on summary disposition, the parties stipulated that plaintiff would pay defendant \$195,658.90. Shortly after the parties stipulated to this amount in damages, on January 19, 1999, judgment was entered against plaintiff for \$195,658.90, which was subsequently affirmed by this Court in *Hudick v Hastings Mut Ins Co (Hudick I)*, 247 Mich App 602, 604; 637 NW2d 521 (2001).

In December 2002, plaintiff was informed by a third-party that it may have overpaid approximately \$83,000 in medical expenses because the hospital billed twice for the same

² Plaintiff argues that the subject matter of the first action was whether the one-year-back rule, MCL 500.3145(1), relieved plaintiff’s obligation to pay defendant’s medical expenses. Although this was an issue in the first action, by virtue of plaintiff’s summary disposition motion, the subject matter of the action was the much broader matter of whether defendant was entitled to medical expenses. See *Hudick v Hastings Mut Ins Co (Hudick I)*, 247 Mich App 602, 604-606; 637 NW2d 521 (2001).

treatment in February and/or March 1997.³ In response, plaintiff pursued two courses of action: (1) plaintiff initiated the current proceeding seeking recovery of the overpayment and (2) in the first proceeding plaintiff moved for relief from judgment pursuant to MCR 2.612(C)(1)(f). The trial court in the first proceeding denied plaintiff's request for relief from judgment because it found that plaintiff was claiming that a mistake had occurred, to which MCR 2.612(C)(1)(a) applied, and plaintiff's motion was not timely because over one year had passed since entry of judgment. Plaintiff's application for leave to appeal to this Court from the trial court's decision was denied. *Hudick v Hastings Mut Ins Co*, unpublished order of the Court of Appeals, issued February 13, 2004 (Docket No. 251541).

We conclude that *res judicata* bars this action. In the first action, it was determined that plaintiff was liable, and the parties agreed that its liability amounted to \$195,658.90. Plaintiff now alleges that, by virtue of a hospital double-billing error and defendant's representation of this error, it is not liable for whatever medical expenses were double-billed. The double-billing occurred before the first litigation and could have been discovered by plaintiff with reasonable diligence. Plaintiff admits that it received the document exhibiting the error before the first litigation. Further, before or during the first action, plaintiff could have telephoned the hospital or requested specific billing and invoices from the hospital to verify defendant's purported expenses *as it was able to do in 2003*, allegedly verifying another entity's discovery of the mistake. If plaintiff had undertaken these simple investigatory measures, plaintiff could have claimed in the first action that it was not liable for this very same alleged over billing.

Plaintiff does not allege any new facts that were not present or available during the first action. Plaintiff argues specifically that *res judicata* does not apply because its overpayment claims did not accrue until it paid the judgment in May 2002, after the first proceeding, at which time defendant became unjustly enriched and plaintiff's reliance became detrimental. We do not agree for two reasons. First, the misrepresentation upon which plaintiff alleges it relied was made in May 1998, before defendant initiated the first action. Second, plaintiff became obligated to pay defendant \$195,658.90 in medical expenses, which included the alleged \$83,000 overpayment, during the course of the first proceeding. Plaintiff expressly agreed to pay defendant this amount on January 14, 1999, which the court incorporated into its January 19, 1999, judgment. The facts of the present action, therefore, are related in time, space, origin and motivation to the facts of the first action, and would have formed a convenient trial unit. *Adair, supra* at 125.

Certain compelling circumstances, however, may prevent the application of *res judicata*, including grounds for relief from judgment pursuant to MCR 2.612. *Pike v City of Wyoming*,

³ The double-billing error is allegedly contained on a document entitled "Medical Bill—Loss History" printout. Plaintiff presented this document in the lower court, implying that it was a "bill" from the University of Michigan for services rendered to defendant, which contained two entries that encompassed the same treatment. Plaintiff contends that defendant submitted this University of Michigan invoice to it in support of defendant's claim for \$182,518.41 in medical expenses. Defendant disputes the authenticity of this document, but for purposes of this appeal, we will assume its authenticity.

431 Mich 589, 627 n 17; 433 NW2d 768 (1988) (Boyle, J., dissenting). In *Farm Bureau Mut Ins Co of Michigan v Buckallew*, 471 Mich 940, 940; 690 NW2d 93 (2004), as a result of the first action, the parties settled a wrongful death action for \$300,000 and dismissed the first action. The plaintiff subsequently refused to pay the agreed settlement because this amount exceeded its no-fault policy limit, which neither party realized at the time the action was settled. The plaintiff filed a second action to rescind or reform the settlement agreement. The Supreme Court determined that the settlement agreement was “tantamount to a judgment” and held that the plaintiff “must seek relief under the principles set forth in MCR 2.612, governing relief from judgment.” *Id.* The Court found that the plaintiff was seeking relief based on a mistake pursuant to MCR 2.612(C)(1)(a), but that the facts did not warrant relief because the “[p]laintiff had access to all the necessary information, and its error is not excused by its own carelessness or lack of due diligence.” *Id.*

Similarly, the proper avenue for plaintiff’s relief here was to seek relief from judgment in the first proceeding pursuant to MCR 2.612(C)(1)(a) based on mistake. This action essentially seeks to reform the terms of the prior judgment based on information that plaintiff could have discovered during the first action but for its own lack of diligence. Although plaintiff did petition the court in the first proceeding for relief from judgment,⁴ plaintiff could not obtain relief under subrule (C)(1)(a) because more than one year had passed since entry of the judgment. MCR 2.612(C)(2); *Altman v Nelson*, 197 Mich App 467, 477; 495 NW2d 826 (1992). Plaintiff cannot be permitted now to pursue a new cause of action where it did not qualify under the court rules for relief from the prior judgment. See generally *Daoud v De Leau*, 455 Mich 181, 200; 565 NW2d 639 (1997).

Therefore, because the actions giving rise to plaintiff’s current claims of overpayment arose from the same transaction litigated in the first action, where plaintiff with reasonable diligence could have brought forth the mistake and overcharging of expenses it now alleges, we hold that the current action is barred by res judicata. See *Adair, supra* at 121; *In re Hamlet*, 225 Mich App 505, 519; 571 NW2d 750 (1997), overruled on other grounds *In re Trejo*, 462 Mich 341; 612 NW2d 407 (2000).

Given our conclusion that the trial court properly granted summary disposition in favor of defendant on the basis of res judicata, the trial court also properly denied plaintiff’s motion for summary disposition based on MCR 2.116(C)(10). Therefore, we need not address plaintiff’s remaining issues on appeal.

Affirmed.

/s/ David H. Sawyer
/s/ Jane E. Markey
/s/ Christopher M. Murray

⁴ Plaintiff sought relief pursuant to MCR 2.613(C)(1)(f), for “[a]ny other reason justifying relief from the operation of the judgment,” which the trial court correctly determined to be inapplicable because the reason for setting aside the judgment fell under MCR 2.612(C)(1)(a) for mistake.