

STATE OF MICHIGAN
COURT OF APPEALS

MAJED ABOUHASHIM,

Plaintiff-Appellant,

v

NORTHLAND INSURANCE,

Defendant-Appellee,

and

U.S. STEEL CORPORATION,

Defendant.

UNPUBLISHED

April 18, 2006

No. 264932

Oakland Circuit Court

LC No. 2004-056216-NF

Before: Hoekstra, P.J., and Wilder and Zahra, JJ.

PER CURIAM.

Plaintiff appeals by right from the circuit court order granting summary disposition to defendant Northland Insurance (Northland) under MCR 2.116(C)(10) on the basis of collateral estoppel and dismissing plaintiff's case without prejudice. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff was injured in a traffic accident while delivering goods for his employer in a truck that was insured by defendant Northland. Plaintiff filed claims for both worker's disability compensation benefits and for no-fault benefits, and Northland began paying no-fault benefits to plaintiff. Eventually both claims resulted in litigation. Because the accident was work related, Northland was entitled to setoff a portion of the no-fault benefits that plaintiff received from the worker's compensation carrier. Because of the setoff, plaintiff's no-fault action was stayed pending resolution of plaintiff's worker's compensation claim. Defendant insurer joined in the worker's compensation proceeding.

In plaintiff's worker's compensation claim for disability benefits, the parties actually litigated and the magistrate necessarily determined the nature, extent, and duration of plaintiff's alleged injuries and disabilities. The magistrate's decision evaluated plaintiff's injuries, determined the period for which he was entitled to benefits, and determined that the last date of disability for any of plaintiff's injuries arising from the accident was November 17, 2003.

Plaintiff did not exercise his statutory right to appeal the magistrate's decision to the Worker's Compensation Appellate Commission. Rather, plaintiff resumed litigation of the no-fault action in the trial court, asserting claims for additional benefits. Northland responded by moving for summary disposition on the basis of collateral estoppel, arguing that the factual issues on which plaintiff's claim for no-fault benefits were predicated had already been decided in the worker's compensation proceeding. The trial court granted Northland's motion. Plaintiff now appeals.

The doctrine of collateral estoppel is intended to relieve parties of the costs and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication by preventing inconsistent decisions. *Monat v State Farm Ins Co*, 469 Mich 679, 692-693; 677 NW2d 843 (2004). The elements of collateral estoppel are: (1) a question of fact essential to the judgment was actually litigated and necessarily determined by a valid and final judgment, (2) the same parties or their privy had a full and fair opportunity to litigate the issue, and (3) mutuality. *Id.* at 682-684. Mutuality requires that that a party invoking collateral estoppel was a party, or in privy to a party, in the prior action and would have been bound by it had it been adverse. *Id.* at 684-685. Collateral estoppel may apply to administrative determinations where they are adjudicatory in nature and provide a right to appeal, and the Legislature intended to make the decision final absent an appeal. *Nummer v Dep't of Treasury*, 448 Mich 534, 542-543; 533 NW2d 250 (1995).

Based on our review of the record in this case, we find that all the requirements of collateral estoppel have been satisfied. Plaintiff and defendant litigated the nature, extent, and duration of plaintiff's injuries, disabilities, and recovery. Determination of these issues was essential to resolution of plaintiff's claim for worker's disability compensation benefits. The worker's compensation magistrate issued a final and valid judgment. Although plaintiff had the statutory opportunity to appeal the magistrate's decision to the Worker's Compensation Appellate Commission and eventually to this Court, he did not. Rather, plaintiff proceeded with this no-fault action in the trial court.

Plaintiff's arguments against the application of collateral estoppel lack merit. Plaintiff argues that application of collateral estoppel effectively deprives him of his right to the jury trial. However, plaintiff has presented no authority for his position. Application of collateral estoppel does not deprive plaintiff of his right to a jury determination of the facts supporting his claim; rather, it deprives him of a retrial of those issues, whether by a jury or by a judge. Collateral estoppel precludes relitigation of facts that have been previously adjudicated, whether those facts were originally determined by jury or by a judge or whether a judge or a jury would determine the facts to be relitigated.

Plaintiff also argues claims that he did not have a full and fair opportunity to litigate his claims because he was not able to present medical evidence of his injuries and disabilities from his new treating physicians before the discovery cut off in the worker's compensation proceeding. Whatever merit this argument may have possessed was lost when plaintiff did not exercise his right to appeal the magistrate's decision and raise this issue.

Plaintiff further argues that under the no-fault act, MCL 500.3101, *et seq.*, he is able to bring subsequent claims for any worsening medical condition related to injuries that he received in this accident. We take no position on any new claims that may arise related to injuries that

plaintiff sustained in the accident and that plaintiff may be able to support with new evidence that was not used in adjudicating plaintiff's worker's compensation claim.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra