STATE OF MICHIGAN

COURT OF APPEALS

ALLEN JOSEPH RICHARD, Plaintiff-Appellant, v FRANKENMUTH MUTUAL INSURANCE COMPANY, Defendant, and BETH ANN WEISKIRCH, Defendant-Appellee.	UNPUBLISHED November 21, 2017 No. 335432 Midland Circuit Court LC No. 14-001638-NF

Before: O'CONNELL, P.J., and MURPHY and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff, Allen Joseph Richard, appeals as of right the circuit court's grant of summary disposition under MCR 2.116(C)(7) (prior judgment) in favor of defendant Beth Ann Weiskirch. The circuit court determined that the small claims judgment Richard obtained against Weiskirch for damage to his motorcycle barred his subsequent circuit court action against her for bodily injury because both claims arose from the same accident. We reverse and remand.

I. FACTS AND PROCEDURAL HISTORY

In July 2013, Weiskirch drove through an intersection and hit Richard, who was riding his motorcycle. The responding police officer determined that Weiskirch failed to yield.

Richard brought a claim in the small claims division in March 2014, stating that the accident destroyed his motorcycle and caused him bodily injury. Richard explained that he did not have collision insurance on the motorcycle, which would have cost one-fourth of the motorcycle's estimated $1,000 value. Consequently, Richard asked for $900 because he expected to sell what was left of the motorcycle for $100. Richard obtained a judgment of $960, including $900 in damages and $60 in costs.

Richard subsequently filed a complaint in the circuit court in July 2014 against defendants Weiskirch and Frankenmuth Mutual Insurance Company (Frankenmuth) for claims arising out of the collision. Richard alleged that Weiskirch's negligence caused or exacerbated a neck injury that required surgery. Richard agreed to dismiss one of his two claims against Frankenmuth, and Frankenmuth later settled Richard's remaining claim. Frankenmuth is not a party to this appeal.

Weiskirch moved for summary disposition under MCR 2.116(C)(7) (prior judgment) and (C)(8) (failure to state a claim). Weiskirch argued that res judicata and collateral estoppel barred the circuit court action because the small claims action involved the same claims and the same parties. Richard opposed the motion.

The circuit court granted Weiskirch's motion for summary disposition under MCR 2.116(C)(7) because res judicata barred the second action against Weiskirch. The circuit court determined that the small claims judgment was a final order that decided the action on its merits and that it involved both Richard and Weiskirch. The circuit court ruled that Richard could have brought a personal injury claim against Weiskirch in the small claims action.

II. STANDARD OF REVIEW

We review de novo a circuit court's decision to grant summary disposition and the issue of res judicata. *Adair v State*, 470 Mich 105, 119; 680 NW2d 386 (2004). In reviewing a grant of summary disposition under MCR 2.116(C)(7), this Court considers all of the evidence and accepts the complaint as true unless other evidence specifically contradicts an allegation. *Adam v Bell*, 311 Mich App 528, 530; 879 NW2d 879 (2015).

III. ANALYSIS

The parties dispute whether the small claims judgment for damage to Richard's motorcycle precluded Richard's subsequent circuit court action for bodily injury against Weiskirch. Res judicata bars a subsequent action when the original action was decided on its merits and ended in a final decision, both the original and subsequent actions involved "the same parties or their privies," and the issue raised in the subsequent action "was, or could have been, resolved in the first" action. *Adam*, 311 Mich App at 532.

The no-fault act abolishes tort liability "arising from the ownership, maintenance, or use" of a motor vehicle with five exceptions, MCL 500.3135(3), commonly called the "mini-tort" provisions, *Kaiser v Smith*, 188 Mich App 495, 496; 470 NW2d 88 (1991) (examining an earlier, substantially similar version of the statute). The fifth exception permits recovery for less than $1,000 of damages to a motor vehicle if "the damages are not covered by insurance." MCL 500.3135(3)(e).

The no-fault act excludes motorcycles from the definition of a motor vehicle. MCL 500.3101(h)(*i*). Therefore, this Court has determined that a plaintiff has no right to recover for damages to a motorcycle. *Nerat v Swacker*, 150 Mich App 61, 64; 388 NW2d 305 (1986).

The statute encourages litigants to bring an action for damages to a motor vehicle up to $1,000 in the small claims division. MCL 500.3135(4)(c). It further provides that a judgment on

this type of damages "is not res judicata in any proceeding to determine any other liability arising from the same circumstances that gave rise to the action." MCL 500.3135(4)(d).

Examining the plain language of MCL 500.3135(4)(d), this Court determined that it signaled the Legislature's intent to separate causes of action for minor property damage from other claims arising from the same automobile accident. *Kaiser*, 188 Mich App at 498. Accordingly, MCL 500.3135(4)(d) did not conflict with the compulsory joinder rule, MCR 2.203(A), which does not apply to small claims actions. *Id*. at 499.

In this case, the parties agree that the small claims division erred by awarding Richard damages because a motorcycle is not a motor vehicle. Nonetheless, Richard argues, MCL 500.3135(4)(d) precluded the circuit court from applying res judicata to bar his action for bodily injury. The small claims division may have erred by granting Richard damages, but that error is uncorrectable because it is not appealable. See MCR 4.305(B); *Schomaker v Armour, Inc*, 217 Mich App 219, 226; 550 NW2d 863 (1996) (affirming the circuit court's refusal to issue a writ of superintending control because the action seeking the writ was an impermissible indirect appeal of a small claims judgment). Because the small claims division appeared to proceed on the basis of MCL 500.3135(3)(e), we apply MCL 500.3135(4)(d) to conclude that the small claims judgment for damages to Richard's motorcycle does not bar Richard's subsequent circuit court action against Weiskirch for bodily injury. Therefore, the circuit court erred by granting summary disposition on the basis of a prior judgment.

We reverse and remand. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ William B. Murphy
/s/ Kirsten Frank Kelly