STATE OF MICHIGAN

COURT OF APPEALS

ELWOOD M. RICHARDSON and SYLVIA RICHARDSON, his wife,

Plaintiffs-Appellants/
Cross-Appellees,

v No. 106583

DETROIT AUTOMOBILE INTER-INSURANCE EXCHANGE, an insurance corporation,

Defendant-Appellee/
Cross-Appellant.

Before: Sullivan, P.J., and Gribbs and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal by right from a Wayne Circuit Court order granting defendant's motion to dismiss on the basis of res judicata and motion for summary disposition, MCR 2.116 (C)(7), statute of limitations. Defendant cross-appeals from the circuit court's denial of defendant's request for sanctions. We affirm the circuit court's order and remand for determination of defendant's damages.

In 1979, plaintiff Elwood M. Richardson was severely injured in the course of his employment. He and his wife, plaintiff Sylvia Richardson, brought an action against defendant for work loss benefits and for recovery of expenses reasonably incurred in obtaining replacement services. MCL 500.3107(b); MSA 24.13107(b).

At trial, Mr. Richardson testified that his wife and children were forced to perform additional household work because of his injury, and that he had promised to pay them. Mr. Richardson testified that he gave his family members cash, a car, a snowmobile and a motorcycle in payment. The jury returned a verdict of no cause of action and specifically found that plaintiffs had not provided reasonable proof that Mr. Richardson

incurred and/or paid reimbursement expenses. The trial court subsequently denied plaintiffs' motion for new trial or JNOV, and this Court affirmed the trial court's order in an unpublished, per curiam opinion. Richardson and DAIIE, #76890, rel'd 6-27-85, lv den 424 Mich 871 (1986).

On July 7, 1986, Mr. Richardson tendered cashiers checks to his wife, son and daughter in the amount of $7300 each, purportedly in payment for replacement services performed between November 14, 1979, and November 14, 1982. On October 8, 1986, plaintiffs filed this action, again seeking recovery of expenses for replacement services. Plaintiffs appeal from the trial court's order dismissing their action.

Plaintiffs contend that their action was not barred by the doctrine of res judicata because, since Mr. Richardson did not pay the expenses until well after the jury trial, this issue could not have been raised at trial. We reject this issue as frivolous.

The doctrine of res judicata bars a subsequent action between the same parties when the facts or evidence essential to the maintenance of the two actions are identical. There are three prerequisites to application of the doctrine of res judicata: (1) the prior action must have been decided on its merits; (2) the issues raised in the second case must have been resolved in the first; and (3) both actions must have involved the same parties or their privies. Roberts v City of Troy, 170 Mich App 567, 577; 429 NW2d 206 (1988). The doctrine bars litigation in the second action of claims that were actually litigated in the prior case as well as claims arising out of the same transaction which plaintiff could have brought, but did not. Sherrell v Bugaski, 169 Mich app 10, 12-13; 425 NW2d 707 (1988).

In this case, there is no dispute that the first and third prerequisites for res judicata have been satisfied. Plaintiffs' first suit was decided on the merits and both actions here involved the same parties.

We find that the second prerequisite has been satisfied as well. The jury in the prior action expressly considered whether plaintiffs incurred or paid any reimbursement expenses. Since the replacement services at issue here are admittedly the same services at issue in the prior action, plaintiffs' claim is barred.

Plaintiffs also argue that the one-year statute of limitations did not begin to run on this claim until Mr. Richardson "incurred" the expense by tendering checks to his wife and children. MCL 500.3145(1); MSA 24.13145 (1). This issue is meritless.

Replacement service expenses are incurred when the obligation or agreement to pay arises. Adkins v Auto Owners Ins Co, 105 Mich App 431; 306 NW2d 312 (1980); Fortier v Aetna Casualty, 131 Mich app 784; 346 NW2d 874 (1984). In this case, Mr. Richardson testified in the prior action that he asked his family to perform replacement services and promised to pay them for their services. The claimed services were performed between November 1979 and November 1982. Clearly, plaintiffs' 1986 action was barred by the statutory one-year limitations period.

We are convinced that plaintiffs' action in this case had no support either in law or in fact and provided no good-faith argument for an extension of existing law. Therefore, we find that the trial court erred in failing to grant defendant's motion for sanctions, and we remand for a finding as to the proper amount. MCR 2.114.

In addition, since plaintiffs' arguments are equally meritless on appeal, defendant is entitled to appellate costs. MCR 7.216(C)(2). Briarwood v Faber's Fabrics, 163 Mich app 784, 792-795; 415 NW2d 310 (1987). We also conclude that plaintiffs' appeal of this matter was vexatious because it was taken without any reasonable basis for belief that there was a meritorious issue to be determined. Consequently, we assess punitive damages

in an added amount equal to the actual expenses incurred by defendant in this appeal MCR 7.216 (C)(2).

This matter is remanded for a determination of damages and for entry of an order assessing actual and punitive damages jointly against plaintiffs and plaintiffs' counsel.

Affirmed and remanded.

/s/ Joseph B. Sullivan
/s/ Roman S. Gribbs
/s/ Martin M. Doctoroff