STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM OTIS,

Plaintiff-Appellant,

v

BELLEVILLE SCRAP AND AUTO PARTS,

Defendant-Appellee

and

RANDALL LOUIS GAFFORD and ELIBERTO GARZA,

Defendants.

September 5, 1991

No. 120628

Before: Jansen, P.J., and Wahls and Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order that granted summary disposition to defendant Belleville Scrap and Auto Parts pursuant to MCR 2.116(C)(7). The trial court held that plaintiff's claim against defendant under the motor vehicle owners' liability statute, MCL 257.401; MSA 9.2101, was barred by collateral estoppel. We affirm.

Plaintiff was severely injured when he was struck by a stolen automobile while standing in his driveway. The automobile had been purchased the day before by Randall Gafford from defendant, although title transfer papers were not filed with the Secretary of State by defendant until after the accident. Neither plaintiff, Gafford, or the driver of the stolen vehicle were insured. Plaintiff brought an action to recover personal injury protection benefits against Amerisure, Inc., defendant's no-fault insurer, and Auto Club Insurance Association, an insurer to whom the claim had been assigned by the Assigned Claims Facility. MCL 500.3172; MSA 24.13172.

Plaintiff moved for summary disposition against both insurers pursuant to MCR 2.116(C)(10) and sought a determination of priority between the two. In March 1987, the trial judge held that defendant was not the owner of the automobile at the time of the accident under the Michigan Vehicle Code, MCL 257.1 et seq., MSA 9.1801 et seq., thus impliedly relieving Amerisure of liability. Plaintiff did not appeal this determination. Plaintiff also states on the present appeal that his no-fault benefits were later paid by Auto Club.

In May 1988, plaintiff filed a complaint against defendant that sought recovery under the motor vehicle owners' liability act, MCL 257.401; MSA 9.2101. Thereafter, defendant was granted summary disposition on the ground that plaintiff was collaterally estopped from relitigating the issue of the vehicle's ownership, and we agree.

Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties or privies to the parties where the prior proceeding culminated in a final, valid judgment and the issue was (1) actually litigated and (2) necessarily determined. People v Gates, 434 Mich 146, 154-156; 452 NW2d 627 (1990); Detroit v Qualls, 434 Mich 340, 357; 454 NW2d 374 (1990). In analyzing whether an issue has been "actually litigated," a reviewing court must consider what has been pled,

and argued and whether the party against whom collateral estoppel is asserted had a full and fair opportunity to litigate the issue. Gates, supra, at 156-157.

Here, plaintiff raised the ownership issue in his 1987 summary disposition motion to determine priority. Ownership of the vehicle was an issue that necessarily had to be determined in order to resolve the priority question pursuant to MCL 500.3115; MSA 24.13115, and was the subject of the disputed motion. Plaintiff does not contest that defendant is a privy of Amerisure. Plaintiff also does not argue that the 1987 order that determined ownership was anything other than a "final order." Plaintiff is therefor now collaterally estopped from relitigating the ownership issue.

We reject plaintiff's argument that ownership of a vehicle for no-fault priority purposes is a different issue from ownership of a vehicle under the Michigan Vehicle Code and the owner's liability statute. This Court has held that the two acts are to be read in pari materia and that the definition of "owner" found in the Michigan Vehicle Code, MCL 257.37; MSA 9.1837, may be read into the no-fault act to determine priorities between insurers. See State Farm Mutual Ins Co v Sentry Ins Co, 91 Mich App 109, 113-114; 283 NW2d 661 (1979), lv den 407 Mich 911 (1979).

Finally, we recognize that a dual ownership theory is viable in plaintiff's present claim under the owners' liability statute. Basgall v Kovach, 156 Mich App 323, 327; 401 NW2d 638 (1986); Messer v Averill, 28 Mich App 62, 65, n 2; 183 NW2d 802 (1970). A review of the 1987 hearing on priority shows that plaintiff was aware of the possibility of dual ownership. The order entered after the hearing, however, unambiguously held that defendant was not the owner nor a registrant of the vehicle, while Gafford was both. Plaintiff should have appealed this determination, rather than seek to relitigate the ownership issue against the bar of collateral estoppel.

Affirmed.

/s/ Kathleen Jansen
/s/ Myron H. Wahls
/s/ Harold Hood