

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

June 27, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2014 IL App (4th) 130649-U

NO. 4-13-0649

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

MELANIE A. JOHNSON,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
CRAIG WINEBREINER; FIRST COMPANY;	)	No. 10L204
COASTAL SOUTHERN PROPERTIES, INC.; and	)	
THE SNYDER COMPANIES,	)	
Defendants,	)	
and	)	Honorable
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Rebecca Simmons Foley,
Intervenor-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Pope and Holder White concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Plaintiff is not entitled to summary judgment where she is collaterally estopped from asserting her workers' compensation settlement was not, at least in part, related to her accident on January 14, 2009.
- ¶ 2 In June 2012, plaintiff, Melanie A. Johnson, filed a motion for summary judgment against the State of Illinois (State), her employer, arguing its lien filed pursuant to section 5(b) of the Workers' Compensation Act (Act) (820 ILCS 305/5(b) (West 2012)) did not attach to her personal-injury action against defendants Craig Winebreiner and First Company. Plaintiff asserted the workers' compensation action "pertain[ed] almost entirely" to a June 2009 injury and not to the January 14, 2009, accident from which her personal-injury action arose. The State

responded, asserting the workers' compensation settlement contract expressly identified the date of injury as January 14, 2009, and the doctrines of judicial estoppel and equitable estoppel prevented plaintiff from later asserting a different injury date. In March 2013, the trial court granted plaintiff's motion for summary judgment.

¶ 3 The State appeals and argues that the trial court erred in granting plaintiff's motion for summary judgment. The State now argues plaintiff should be collaterally estopped from asserting that her workers' compensation settlement does not relate to the January 14, 2009, injury, and its section 5(b) lien attaches to her personal-injury settlement with Winebreiner and First Company. We reverse.

¶ 4 I. BACKGROUND

¶ 5 In April 2011, plaintiff filed a first amended complaint for personal injuries against defendants Craig Winebreiner, First Company, Coastal Southern Properties, Inc., and The Snyder Companies. She alleged that on January 14, 2009, Winebreiner was driving a snowplow in the parking lot at 501 West Washington Street, Bloomington, Illinois. Plaintiff was walking through the parking lot in the course of her employment with the Illinois Department of Human Services. The snowplow struck plaintiff, causing her to be injured. In September 2011, the counts against Coastal Southern Properties, Inc., and The Snyder Companies were dismissed.

¶ 6 In June 2012, plaintiff filed a motion for summary judgment pursuant to section 2-1005 of the Code of Civil Procedure (Procedure Code) (735 ILCS 5/2-1005 (West 2012)) against the State. Plaintiff stated she was injured in the January 14, 2009, accident and was "ultimately diagnosed with a minimal cervical herniation and right elbow epicondylitis" by Dr. Joseph Newcomer. She underwent treatment for her accident injuries "from January 15, 2009[.]"

through April 17, 2009." According to plaintiff, she subsequently injured her right wrist and hand in a separate occurrence at work on or about June 1, 2009, "after filing at work for two hours." Dr. Newcomer, in his deposition, testified this injury was "entirely unrelated" to the January 14, 2009, accident. Plaintiff's motion stated, in relevant part, as follows:

"Plaintiff filed a workers' compensation claim with the [State]/Dept. of Human Services under Case #09 WC 17164 for which she entered into a settlement. \*\*\* Despite the settlement referencing an injury date of January 14, 2009, the settlement pertains almost entirely to the injury on plaintiff's right hand and wrist. The right hand surgery of 8/29/09 and all of the temporary total disability benefits related only to the right hand and wrist injury which arose in the filing incident in June 2009 and not in the January 2009 snowplow incident." (Emphasis in original.)

Plaintiff argued Dr. Newcomer's deposition established a "complete lack of proximate cause between the subject incident of January 14, 2009[,] and the right hand and wrist injury, which originated in June 2009 and forms the entirety or significant majority of the workers[] compensation claim from which the lien originated." Plaintiff asserted no factual issue existed that the workers' compensation settlement applied to the January 14, 2009, injury "despite the unsupported indications on the workers' compensation settlement documents" because, given Dr. Newcomer's testimony, plaintiff would be "unable to causally relate her August 2009 hand surgery" to the January 14, 2009, injury.

¶ 7 Dr. Newcomer's deposition, which was attached to plaintiff's summary judgment

motion, was taken on March 2, 2012. Dr. Newcomer testified plaintiff visited him on March 12, 2009, and he diagnosed her with "epicondylitis, right elbow." Plaintiff also complained of "pain with wrist extension" on her right wrist. On April 22, 2009, plaintiff was "still symptomatic over the epicondyle," and he prescribed her physical therapy. Plaintiff's next visit with Dr. Newcomer occurred on June 3, 2009. At this time, Dr. Newcomer began addressing her wrist complaints.

Dr. Newcomer testified, in relevant part, as follows:

"Q. And had she that type of a wrist complaint prior to June of 2009?

A. I don't believe so.

Q. Do you have—

A. Not to this extent.

Q. All right. Do you have an opinion to a reasonable degree of medical certainty as to the cause of the wrist pain that [plaintiff] had as of June 2nd and 3rd, 2009?

A. It sounds like she was—it's a result of the filing that she was doing.

\* \* \*

Q. And do you have an opinion to a reasonable degree of medical certainty as to what caused the need for that August 2009 wrist surgery?

A. Well, looking back at the physical therapy notes, more than likely related to that incident she described when she was

doing that filing."

Surgery on plaintiff's wrist was performed in August 2009.

¶ 8 In his deposition, Dr. Newcomer referred to a progress note dated June 2, 2009, that stated, in relevant part, as follows:

"Prior to today patient was reporting improvements with her symptoms re: radial tunnel and lateral epicondylitis. After a 2 hour stint filing today, patient's arm is flared up and her wrist and thumb are now sore as well."

¶ 9 Plaintiff attached the workers' compensation settlement contract to her summary judgment motion. The settlement contract identifies the date of accident as "01/14/2009." It states the accident affected plaintiff's "[n]eck, right arm, [and] right hand." The nature of the injury is identified as "[n]eck, right arm, right hand surgery 8/29/09." The terms of the settlement state, in relevant part, as follows:

"The [State] agrees to pay and the Petitioner agrees to accept \$35,986.84 in full, final and complete settlement of any and all claims of any kind, nature and description under the [Act] as a result of accidental injuries allegedly incurred on or about 01/14/2009. Issues exist between the parties including as to whether the Petitioner has incurred injuries to the degree alleged and this settlement is made to amicably settle these issues. \*\*\*

This settlement represents:

20% Loss of use of the Right hand + 6% Loss of use of the

right arm + 1.5% Loss of use of the total person pursuant to  
Section 8(d)2 of the Act. [The State] reserves its rights pursuant to  
Section 5(b) of the Act."

The settlement was approved by the Workers' Compensation Commission on April 23, 2010.

¶ 10 In October 2012, plaintiff informed the court that she had settled her personal-injury claim with Winebreiner and First Company. The terms of this settlement are not included in the record.

¶ 11 In November 2012, the State filed a written response to plaintiff's summary judgment motion. The State argued the doctrines of judicial estoppel and equitable estoppel applied as a bar to summary judgment. It asserted plaintiff made inconsistent allegations about when her injuries occurred and that she should be estopped from asserting the workers' compensation settlement was not for injuries sustained on January 14, 2009. The State pointed out plaintiff identified January 14, 2009, as the injury date on her application for adjustment of claim and in other workers' compensation documents, and it was not until plaintiff moved for summary judgment that she alleged the workers' compensation settlement was for injuries sustained in June 2009, and not January 14, 2009. The State attached an affidavit from Kelly O. Phelps, the assistant Attorney General who defended the State in plaintiff's workers' compensation claim. Phelps stated plaintiff's workers' compensation attorney prepared the workers' compensation settlement contract. The settlement contract was approved, without modification, on April 23, 2010.

¶ 12 In November 2012, plaintiff filed her written reply. Plaintiff stated, in relevant part, as follows:

"The State failed to investigate the medical cause of the plaintiff's injuries in relation to her workers[] compensation claim and now seeks to obtain an unfair and unwarranted rebate for the portions of its workers[] compensation settlement that were not caused by the negligence of a third[-]party tortfeasor. \*\*\*

\*\*\* The only difference between the two proceedings is that defense counsel in this action chose to dispute the causal connection between the January 14, 2009[,] occurrence and the right wrist and hand injuries that led to the surgery in August 2009 \*\*\*. The State never chose to dispute this medical connection in the workers[] compensation proceeding. \*\*\*

\*\*\* The State still has Section 5(b) rights as to the January 14, 2009[,] injuries, which were caused by the negligence of the third parties, [Winebreiner and First Company]. As a matter of law, [t]he State simply does not have any Section 5(b) rights to recovery as to the June 1, 2009[,] injuries, which were not caused by the negligence of third parties and are not related to the allegation in [the personal-injury action]."

¶ 13 In December 2012, the trial court held a hearing on plaintiff's motion for summary judgment. Neither a verbatim transcript nor a bystander's report of the hearing (Ill. S. Ct. R. 323(c) (eff. Dec. 13, 2005)) is included in the appellate record. The court took the matter under advisement.

¶ 14 In March 2013, the trial court granted the plaintiff's motion for summary judgment. The court concluded neither judicial estoppel nor equitable estoppel applied under the circumstances. The court further concluded the State's section 5(b) lien was "inapplicable to this action for any treatment or benefit arising as a result of the June 1, 2009[,] injury to [p]laintiff's right hand and wrist."

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 The State appeals and argues that the trial court erred in granting plaintiff's motion for summary judgment. The State argues that based on the workers' compensation settlement agreement, plaintiff should be collaterally estopped from arguing the January 14, 2009, snowplow accident did not cause her right arm, hand, and wrist injuries, and thus its section 5(b) lien attaches to her personal-injury settlement with Winebreiner and First Company.

¶ 18 A. Standard of Review and the Doctrine of Collateral Estoppel, Generally

¶ 19 "Summary judgment is proper when 'the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' " *Skokie Castings, Inc. v. Illinois Insurance Guaranty Fund*, 2013 IL 113873, ¶ 27, 998 N.E.2d 69 (quoting 735 ILCS 5/2-1005(c) (West 2010)).

¶ 20 "The doctrine of collateral estoppel prevents the relitigation of issues resolved in earlier causes of action." *American Family Mutual Insurance Co. v. Westfield Insurance Co.*, 2011 IL App (4th) 110088, ¶ 17, 962 N.E.2d 993. "For collateral estoppel to apply, the following requirements must be met: '(1) the issue decided in the prior adjudication is identical

with the one presented in the suit in question, (2) there was a final judgment on the merits in the prior adjudication, and (3) the party against whom estoppel is asserted was a party or in privity with a party to the prior adjudication.' " *Id.* (quoting *Gumma v. White*, 216 Ill. 2d 23, 38, 833 N.E.2d 834, 843 (2005)).

¶ 21 A trial court's order granting summary judgment is reviewed *de novo*, as is whether the doctrine of collateral estoppel applies. *Id.*; *Skokie Castings*, 2013 IL 113873, ¶ 27, 998 N.E.2d 69.

¶ 22 B. Section 5(b) of the Act

¶ 23 Pursuant to section 5(b) of the Act, an employer may have "a lien upon any award, judgment or fund out of which [an] employee might be compensated" by a third-party tortfeasor. 820 ILCS 305/5(b) (West 2012). The Illinois Supreme Court has stated, "[t]he plain language of section 5(b) shows that an employer's reimbursement of workers' compensation payments from an employee's third-party recovery is crucial to the workers' compensation scheme." *In re Estate of Dierkes*, 191 Ill. 2d 326, 331, 730 N.E.2d 1101, 1104 (2000). An employer's lien "attaches to any recovery the employee might receive from a tortfeasor who caused the injury for which benefits were paid." *Woodward v. Pratt, Bradford & Tobin, P.C.*, 291 Ill. App. 3d 807, 810, 684 N.E.2d 1028, 1030 (1997).

¶ 24 C. The State's Section 5(b) Lien on Plaintiff's Personal-Injury Settlement

¶ 25 This case assumes an unusual procedural posture. In the trial court, the State did not argue a question of material fact precluded summary judgment. It argued only that judicial estoppel and equitable estoppel applied and barred plaintiff from asserting the workers' compensation settlement did not compensate her for injuries sustained in the January 14, 2009,

accident. Indeed, during oral argument the State conceded the trial court was not mistaken in finding the doctrines of judicial estoppel and equitable estoppel did not apply in this case. For the first time on appeal, the State argues collateral estoppel, not judicial estoppel or equitable estoppel, applies. This is obviously a different argument than the one made in the trial court. However, plaintiff does not argue the State forfeited the collateral-estoppel argument. Rather, plaintiff responds to the merits of the collateral-estoppel argument. Since plaintiff has not objected to the State's newly raised collateral-estoppel argument, we will address it here.

¶ 26 As an initial matter, according to the collateral-estoppel analysis in *American Family Mutual Insurance*, we find the parties here are the same parties in the prior adjudication, the workers' compensation case.

¶ 27 Next, we consider whether the workers' compensation settlement was an adjudication on the merits. "A judgment is on the merits in the sense that it may be used to preclude relitigation of an issue in a subsequent action when the judgment 'amounts to a decision as to the respective rights and liabilities of parties based on the ultimate facts or the state of the facts disclosed by pleadings or evidence, or both, and on which the right of recovery depends.'" *Richter v. Village of Oak Brook*, 2011 IL App (2d) 100114, ¶ 19, 958 N.E.2d 700 (quoting *Fried v. Polk Brothers*, 190 Ill. App. 3d 871, 878, 546 N.E.2d 1160, 1164 (1989)). A workers' compensation settlement is a final adjudication on the merits in dispute up to the time of the agreement. *Stromberg Motor Device Co. v. Industrial Comm'n*, 305 Ill. 619, 622, 137 N.E. 462, 464 (1922). Thus, pursuant to *American Family Mutual Insurance*, there was a final judgment on the merits in the prior adjudication.

¶ 28 Finally, we must identify the issues resolved by the workers' compensation

settlement and whether those issues are now in dispute in applying the State's section 5(b) lien to plaintiff's personal-injury settlement.

¶ 29 The State argues that the workers' compensation settlement determined that the January 14, 2009, accident caused injuries to plaintiff's right arm and hand and its lien therefore attaches to plaintiff's personal-injury settlement. Plaintiff argues the workers' compensation action did not determine that the January 14, 2009, accident proximately caused her wrist injury, and, according to her, Dr. Newcomer's testimony demonstrates the wrist injury was proximately caused by the June 2009 filing incident.

¶ 30 The Act states an employee's injury is compensable if it arises "out of and in the course of the employment." 820 ILCS 305/2 (West 2012). "An employment accident need not be the sole cause or even the principal cause of a claimant's injury to render it compensable under the Act." *Rotberg v. Industrial Comm'n*, 361 Ill. App. 3d 673, 682, 838 N.E.2d 55, 63 (2005). See also *Global Products v. Illinois Workers' Compensation Comm'n*, 392 Ill. App. 3d 408, 411, 911 N.E.2d 1042, 1046 (2009) ("For an employer to be relieved of liability by virtue of an intervening cause, the intervening cause must completely break the causal chain between the original work-related injury and the ensuing condition.").

¶ 31 The workers' compensation settlement contract here plainly identified January 14, 2009, as the date of injury, and it specified the injuries were to plaintiff's neck, right arm, and right hand. Plaintiff's wrist injury can certainly be characterized as an injury to her "right arm" or "right hand."

¶ 32 The issue of whether plaintiff's right hand and wrist injuries were caused, at least in part, by the January 14, 2009, accident was determined in the workers' compensation

