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IN THE
COURT OF APPEALS OF INDIANA

Kathryn Davidson,
Appellant-Plaintiff,

v.

State of Indiana; Indiana Department of Transportation; I-69 Development Partners, LLC; DLZ Indiana, LLC; Aztec Engineering Group, Inc.; and Walsh Construction Company II, LLC,
Appellees-Defendants.

April 19, 2022

Court of Appeals Case No. 21A-CT-1516

Appeal from the Monroe Circuit Court

The Honorable AmyMarie Travis, Special Judge

Trial Court Cause No. 53C01-2003-CT-621

Friedlander, Senior Judge.

[1] Kathryn Davidson appeals the trial court's dismissal of her complaint against the Appellees. Concluding that the trial court erred when it dismissed Davidson's complaint pursuant to the doctrine of collateral estoppel and due to claim splitting, we reverse.

[2] Davidson presents four issues. Two of the issues, consolidated and restated, are dispositive:

> 1. Whether the trial court erred by determining that collateral estoppel applied to bar Davidson's suit against the Appellees.
>
> 2. Whether the trial court erred by determining that Davidson's suit against the Appellees is barred because it constitutes claim splitting.

[3] On April 10, 2018, Davidson was a passenger in a semi-truck driven by Brandon Nicholson. In the early morning hours, Nicholson fell asleep, lost control of the semi-truck, and collided with a bridge pier of an overpass. As a result of the accident, Davidson suffered severe and permanent injuries and is now a C-6 incomplete quadriplegic.

[4] In August, Davidson sent a tort claim notice to the State and the Indiana Department of Transportation (INDOT) alleging that her injuries were caused in part by their negligence stemming from the road construction in the vicinity of the accident. In November, the State notified Davidson that it had completed its investigation and that it denied her claim.

[5] In December, Davidson filed a negligence action in Lake County ("the Lake County Action") against J Trucking LLC, Nicholson's employer, and Sasa Jankovic, the owner of J Trucking. Jankovic was later dismissed from the case. A bench trial was held in August 2019, after which the court concluded, in part:

> 22. Nicholson's negligence was a proximate cause of the motor vehicle collision.
>
> 23. Nicholson's negligence was a proximate cause of DAVIDSON'S claimed injuries, medical treatment, and medical expenses.
>
> *****
>
> 28. At the time of Nicholson's negligent driving, he was an agent of J TRUCKING.
>
> *****
>
> **JUDGMENT**
>
> **WHEREFORE**, based upon all of the foregoing, the Court found and Ordered:
>
> 1. Judgment entered in favor of DAVI[D]SON against J TRUCKING in the amount of $3,237,696.00.

Appellant's App. Vol. II, pp. 69-70 (Ruling from Bench Trial of August 1, 2019).

[6] In March 2020, Davidson filed the present negligence action in Monroe County, where the accident occurred. The defendants (Appellees herein) all filed dispositive motions under either Trial Rule 12(B)(6) or 12(C). Following a hearing on these motions, the court dismissed Davidson's complaint with prejudice. Davidson filed a motion to correct error, which was denied, and she now appeals the dismissal of her complaint.

[7] We review de novo the trial court's ruling on a motion to dismiss under Trial Rule 12(B)(6). *Freels v. Koches*, 94 N.E.3d 339 (Ind. Ct. App. 2018). Viewing the complaint in the light most favorable to the non-moving party, we determine whether it states any facts on which the trial court could have granted relief. *Id.* If the complaint states a set of facts that, even if true, would not support the relief requested, we will affirm the dismissal. *Id.*

[8] Likewise, we review de novo the court's ruling on a Rule 12(C) motion for judgment on the pleadings and accept as true the well-pleaded material facts alleged in the complaint. *Consol. Ins. Co. v. Nat'l Water Servs., LLC*, 994 N.E.2d 1192 (Ind. Ct. App. 2013), *trans. denied*. A Rule 12(C) motion is to be granted only where it is clear from the face of the complaint that under no circumstances could relief be granted. *Id.*

[9] Davidson first contends the court erred by dismissing her complaint pursuant to the doctrine of collateral estoppel. Generally, collateral estoppel operates to bar the subsequent litigation of a fact or issue that was adjudicated in a former lawsuit. *Freels*, 94 N.E.3d 339. In that situation, the former adjudication is conclusive in the subsequent action only as to those issues that were actually litigated and determined therein, even if the actions are based on different claims. *Id.* Our review of a trial court's decision regarding the use of collateral estoppel is subject to an abuse of discretion standard. *State v. Barnett*, 176 N.E.3d 542 (Ind. Ct. App. 2021), *trans. denied*, 180 N.E.3d 933 (Ind. 2022).

[10] There are two categories of collateral estoppel—offensive and defensive. *MicroVote Gen. Corp. v. Ind. Election Comm'n*, 924 N.E.2d 184 (Ind. Ct. App. 2010). Collateral estoppel is offensive when a plaintiff seeks to foreclose a defendant from relitigating an issue the defendant has previously litigated unsuccessfully in an action with another party. *Id.* Similarly, the term defensive collateral estoppel has been used to describe the situation where a defendant seeks to prevent a plaintiff from asserting an issue that the plaintiff *has previously litigated and lost* against another defendant. *Tofany v. NBS Imaging Sys., Inc.*, 616 N.E.2d 1034 (Ind. 1993) (citing *Parklane Hosiery Co., Inc. v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)); *see also Defensive Collateral Estoppel*, BLACK'S LAW DICTIONARY (11th ed. 2019) ("Estoppel asserted by a defendant to prevent a plaintiff from relitigating an issue previously decided against the plaintiff."); *but see Bornstein v. Watson's of Indianapolis, Inc.*, 771 N.E.2d 663 (Ind. Ct. App. 2002) (affirming trial court's grant of summary judgment for defendant on basis of collateral estoppel where plaintiffs had obtained favorable verdict in prior lawsuit). Thus, "[i]n both the offensive and defensive use situations, the party against whom estoppel is asserted has litigated and lost in an earlier action." *Parklane Hosiery Co.*, 439 U.S. at 329, 99 S. Ct. at 650.

[11] Here, the Appellees asserted, and the trial court agreed, that Davidson is collaterally estopped from litigating this action "because the facts and issues in this case were determined in a previous action" (i.e., the Lake County Action). Appellant's App. Vol. II, p. 20 (Order Granting Defendants' Motion to Dismiss

with Prejudice). While both actions arise from the same accident, each of the actions requires proof of an actor's negligence and liability that the other does not. As is clear from the record, the judgment in the Lake County Action was limited solely to the negligence of Nicholson, who was operating the truck as an agent of J Trucking. J Trucking and the Appellees are separate entities with separate interests. The Lake County Action and its resulting judgment against J Trucking decided nothing with regard to the Appellees' alleged negligence and liability. Even where collateral estoppel is applicable, the former adjudication is conclusive in the subsequent action only as to those issues that were actually litigated and determined therein. *Freels*, 94 N.E.3d 339. Therefore, collateral estoppel does not extend to matters that were not expressly adjudicated and can be inferred only by argument. *Id.* Thus, the issue of the Appellees' alleged negligence and liability has not been previously litigated.

[12] Moreover, Davidson did not lose in the Lake County Action. *See Tofany*, 616 N.E.2d 1034 (in defensive collateral estoppel, estoppel is asserted against plaintiff who lost in earlier action). Davidson obtained a favorable judgment against J Trucking in the Lake County Action.

[13] The issue of Appellees' negligence was neither litigated in nor determined by the prior action, and Davidson was successful in the prior action. Accordingly, Davidson's claims against the Appellees are not precluded by collateral estoppel in this new action.

[14] Davidson next asserts the trial court erred by determining that this action constitutes claim splitting. We agree. There is no dispute in the instant appeal that the trial court applied collateral estoppel, the issue preclusion branch of res judicata. Yet, claim splitting occurs in situations of claim preclusion where multiple suits are brought against the same defendant (or those in privity), not in circumstances of issue preclusion like we are addressing here. *See State of Ind., Ind. State Highway Comm'n v. Speidel*, 181 Ind. App. 448, 392 N.E.2d 1172 (1979) ("As to claim preclusion, a party is not allowed to split a cause of action, pursuing it in a piecemeal fashion and subjecting a defendant to needless multiple suits."). Thus, the court's determination that Davidson was engaging in improper claim splitting by pursuing this action is error.

[15] Based on the foregoing, we conclude the court erred by dismissing Davidson's complaint by reason of collateral estoppel and claim splitting.

[16] Judgment reversed.

Bradford, C.J., and Robb, J., concur.