

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2001-CA-000881-MR

HAROLD BURGHER

APPELLANT

v. APPEAL FROM SCOTT CIRCUIT COURT  
HONORABLE ROBERT OVERSTREET, JUDGE  
ACTION NO. 95-CI-00101

TOYOTA MOTOR MANUFACTURING,  
U.S.A., INC.

APPELLEE

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BARBER, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: This is an appeal from a summary judgment granted to the Appellee, Toyota Motor Manufacturing, U.S.A., Inc., in a personal injury case. We affirm.

On March 29, 1994, Appellant reported to work for his employer, Ryder Distribution Resources, Inc. (Ryder), at Toyota Motor Manufacturing, U.S.A., Inc.'s (Toyota) Scott County Plant. Toyota had contracted with Ryder to deliver parts to Toyota's

plant and supervise and run its loading docks. On that day, Appellant was working on the loading dock and truck staging area at Toyota. On his lunch break while Appellant was eating in the designated break area right off the loading dock, he sustained injuries to his back and neck when some nearby free-standing shelves fell on top of him. The shelves fell after some of Toyota's employees ran into them while playing basketball, causing them to fall and strike Appellant.

Appellant received treatment for his injuries and was excused from work for eight weeks, during which time he drew workers' compensation in the form of temporary total disability benefits of \$415.00 per week. Workers' compensation also paid Appellant's medical bills.

We turn to the procedural history out of which this appeal arises. In 1995, Appellant filed a civil lawsuit against Toyota alleging negligence and seeking damages for his personal injuries. Appellant's theory was that he was on his lunch break when the accident caused by Toyota's negligence occurred; thus, the accident was not within the course and scope of his employment. Toyota filed a motion for summary judgment on the grounds that the accident was work-related, and Toyota was immune from liability because it was an "up-the-ladder" employer.

In early 1996, at the time for a hearing on Toyota's summary judgment, counsel for Appellant informed the trial court that he was going to file a workers' compensation claim and that the administrative law judge would decide whether Appellant's injury was work-related. At Appellant's request, the trial court placed the case in abeyance.

On February 5, 1996, Appellant filed his application for adjustment of claim with the workers' compensation board against Ryder and the Special Fund. Ryder filed a pleading stipulating that Appellant's injury arose out of and in the course of his employment. The Special Fund filed a motion to dismiss on the ground that the claim was neither work-related nor in the course and scope of Appellant's employment. Appellant did not file a response to the Special Fund's motion, so the administrative law judge entered a "show cause" order requiring a response from Appellant. In his response, Appellant admitted that he was not working at the time of the accident and that the accident did not occur during the course or scope of his work; however, he asserted that the claim should be seen as work-related because it occurred during his regularly scheduled work day. On November 20, 1996, the administrative law judge granted the Special Fund's motion to dismiss and dismissed Appellant's workers' compensation claim. Appellant did not appeal the decision to the Workers' Compensation Board.

On January 2, 1997, at Appellant's request, the trial court placed the civil case against Toyota back on the active docket. In May of 1998, Toyota renewed its motion for summary judgment. On June 11, 1998, the trial court granted Toyota's motion for summary judgment, but did not issue a written order stating the grounds until October 18, 1999, at which time the court found that Appellant's cause of action was barred by the up-the-ladder provisions of Kentucky's Workers' Compensation Act.

On October 26, 1999, citing Godbey v. University Hospital of the Albert B. Chandler Medical Center, Inc., Ky. App., 975 S.W.2d 104 (1998), Appellant moved to set aside the trial court's order granting summary judgment in favor of Toyota, asserting that the trial court was bound by the workers' compensation decision that Appellant was not injured in a work-related accident. On December 22, 2000, the trial court granted Appellant's motion to set aside summary judgment. Then, apparently on its own motion, the trial court re-granted Toyota's motion for summary judgment on April 6, 2001, and issued a final and appealable order.

On appeal, Appellant does not contest the merits of the trial court's order of summary judgment in favor of Toyota. Instead, Appellant argues that the workers' compensation dismissal has a preclusive effect on the trial court. Thus, the

trial court was bound by the determination of the administrative law judge that Appellant was not injured in a work-related accident; therefore, Appellant should be able to proceed against Toyota on a negligence theory. We disagree.

Appellant argues that Godbey establishes that "Kentucky has for many years followed the rule that the decisions of administrative agencies acting in judicial capacity are entitled to the same res judicata effect as judgments of a court." However, the doctrine of res judicata is not applicable in this case because Toyota was not a party to the earlier action. As stated in Godbey, "[t]he doctrine of res judicata prohibits the relitigation of matters which actually were, or could have been, litigated to a conclusion in an earlier action. **This applies only to parties to the earlier action.**" Id. at 105 (emphasis added).

Godbey also discusses a doctrine related to res judicata called issue preclusion or collateral estoppel; however, it is also inapplicable in this case. Id.; see also Berrier v. Bizer, Ky., 57 S.W.3d 271, 281 (2001). Generally, "[t]he doctrine of issue preclusion, which may be used either 'offensively' or 'defensively,' allows the use of the earlier judgment by one **not party to the original action** to preclude relitigation of matters litigated in the earlier action." Godbey, 975 S.W.2d at 105 (emphasis in original). "[C]ollateral

estoppel applies only if the party against whom it is sought to be applied had a realistically full and fair opportunity to litigate the issue, and if principles of justice and fairness would be served by its application." See Berrier, 57 S.W.2d at 281 (internal citations omitted). Here, we have a party to workers' compensation proceedings, Appellant, attempting to preclude litigation of the question of the nature of Appellant's injury on the basis of collateral estoppel when Toyota did not have an opportunity to be heard in those proceedings.

Collateral estoppel can not be used in this manner. As the United States Supreme Court held in Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation, 402 U.S. 313, 91 S.Ct. 1434, 1443, 28 L.Ed.2d 788 (1971),

Although neither judges, the parties, nor the adversary system performs perfectly in all cases, the requirement of determining whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate is the most significant safeguard.

Some litigants -- those who never appeared in a prior action -- may not be collaterally estopped without litigating the issue. They have never had a chance to present their evidence and arguments on the claim. Due process prohibits estopping them despite one or more existing adjudications of the identical issue which stand squarely against their position.

For the foregoing reasons, the order of the Scott Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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