

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 5, 2024 Session

FILED

08/27/2026

Clerk of the
Appellate Courts

MICHAEL DINOVO, JR. ET AL. v. KENNETH BINKLEY ET AL.

**Appeal from the Circuit Court for Davidson County
No. 16C121 Amanda Jane McClendon, Judge**

No. M2023-00345-COA-R3-CV

A worker at an oil company was injured and entered into a workers' compensation settlement agreement in which he represented that he was an employee of the oil company. He subsequently sued the oil company, asserting that he had always been an independent contractor and not an employee and that he had only stated otherwise because of intentional misrepresentation on the part of the oil company. The trial court granted summary judgment to the oil company. Because the worker is bound by his previous representation that he was an employee and because he did not demonstrate a genuine issue of material fact regarding intentional misrepresentation, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

JEFFREY USMAN, J., delivered the opinion of the court, in which ANDY D. BENNETT, J., joined. ARNOLD B. GOLDIN, J., not participating.

Tony Seaton and Thomas J. Smith, Johnson City, Tennessee, for the appellant, Michael DiNovo, Jr.

Clint J. Woodfin, Knoxville, Tennessee, and Lance W. Thompson and Allison Wiseman Acker, Nashville, Tennessee, for the appellee, Southern Energy Company.

OPINION

I.

Southern Energy Company (Southern Energy) is an oil company that owns the gasoline and diesel equipment for several convenience stores. Southern Energy's owner and president, Gary King, decided to manufacture biodiesel in 2012, and Southern Energy

constructed a biodiesel plant. In the summer of 2013, Michael DiNovo¹ was hired to make the biodiesel for Southern Energy. Mr. DiNovo was initially hired as an independent contractor; the parties subsequently disagreed regarding whether he later became a statutory employee for the purposes of workers' compensation under Tennessee law.

On November 18, 2013, a truck driven by Frontier Logistical Services's employee Kenneth Binkley was delivering methanol to Southern Energy's biodiesel plant when an explosion occurred. Mr. DiNovo was working at the plant and suffered significant injuries that day, including burns to over 50 percent of his body, which resulted in his being put into a medically induced coma. Mr. DiNovo and his wife filed a lawsuit against Mr. Binkley, Frontier Logistical, and Cone Solvents in 2014.

Mr. DiNovo additionally sought recourse against Southern Energy through a workers' compensation action as an employee of Southern Energy. According to the statement of undisputed material facts, the Tennessee Department of Occupational Safety and Health determined that Southern Energy had committed over twenty violations in the construction and maintenance of the plant. Mr. DiNovo, who was represented by counsel in the workers' compensation proceedings, requested a workers' compensation Benefit Review Conference on February 24, 2014. When Mr. DiNovo filed his taxes in 2014, he claimed W-2 taxable income and listed Southern Energy as his employer.

In 2016, Southern Energy entered into a workers' compensation settlement agreement with Mr. DiNovo to compensate him for his injuries related to the explosion and fire. The settlement agreement identified Mr. DiNovo as Southern Energy's "Employee" and Southern Energy as Mr. DiNovo's "Employer." Specifically, Mr. DiNovo agreed as part of his settlement that "[o]n or about November 18, 2013, [Mr. DiNovo] was employed by [Southern Energy] and engaged in activity arising out of and in the course and scope of employment, when he was involved in an explosion and fire resulting in injury to multiple parts of his body." Mr. DiNovo, his attorney, and Southern Energy signed the settlement agreement, and the document was approved in a final order by a Workers' Compensation Specialist and ratified on February 12, 2016. The approval recited that it would be entitled to the same standing as a judgment entered by a court of record.

While negotiating this settlement with Southern Energy, Mr. DiNovo's separate lawsuit in Davidson County Circuit Court against the other alleged tortfeasors progressed. Those defendants eventually asserted comparative fault against Southern Energy, and Mr. DiNovo added Southern Energy and its agent, Mr. King, to his lawsuit in 2019 by amending his complaint.

The amended complaint alleged a cause of action for intentional misrepresentation

¹ Mr. DiNovo's name is spelled inconsistently, both with a capital and a lower case N throughout the record. We use the capital N, as used in the appellate brief, except where quoting from the record.

against Mr. King:

Subsequent to the above-described incident giving rise to this cause of action, Defendant Gary King, in an effort to avoid liability in tort, both individually and in his capacity as president and/or agent of Southern Energy, fraudulently attempted to claim that Mr. Dinovo was an employee of Southern Energy at the time of the incident. At the time Defendant Gary King made the representation that Mr. Dinovo was an employee[,] the Defendant Gary King knew the representation was false or made the representation recklessly without knowing whether it was true or false. Defendant Gary King intended that Plaintiffs rely on the representation and act in reliance of the representation. Plaintiffs did not know the representation was false and were justified in relying upon the truth of the representation. As a result of the reliance upon the truth of the representation, Plaintiffs sustained damages.

As to Southern Energy, Mr. DiNovo asserted respondeat superior liability for the actions of Mr. King:

At all times relevant to this cause of action, Defendant Gary King was an employee, president and or agent of Defendant Southern Energy. At the time and place of the above-described incident, Defendant Gary King was acting within the course and scope of his employment as employee, president and/or agent of Defendant Southern Energy. Under the doctrine of respondeat superior, Defendant Southern Energy is liable for all of the above-described negligent and/or intentional acts or omissions of their employee, president, and/or agent Defendant Gary King and for all of the violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and comparable Tennessee regulations by their employee Defendant Gary King. Therefore, Defendant Southern Energy is liable to the Plaintiffs for all such injuries and damages they sustained, including punitive damages, due to the acts or omissions of Defendant Gary King.

By the time Southern Energy filed its outcome-determinative summary judgment motion, all other defendants, some of whom settled with Mr. DiNovo, had been dismissed from the action. In seeking summary judgment, Southern Energy argued that Mr. DiNovo, who had repeatedly affirmed that he was an employee of Southern Energy, was bound by the exclusive remedy of workers' compensation of which he had already reaped the benefits. Southern Energy also relied on various theories of estoppel, asserting that the tort action was prohibited by judicial estoppel because Mr. DiNovo had sworn an oath averring he was an employee, by equitable estoppel because Southern Energy had relied on his statement to its detriment by paying the claim, by res judicata because the workers' compensation settlement was an adjudication on the merits, and by collateral estoppel

because Mr. DiNovo's employee status was determined in the workers' compensation proceeding.

Mr. DiNovo responded by asserting that the workers' compensation settlement was orchestrated by fraud on the part of Southern Energy, which had been seeking to limit its own tort liability. Mr. DiNovo argued that he only represented that he was Southern Energy's employee in the workers' compensation proceedings and on his taxes because Southern Energy fraudulently represented to him that he was an employee and because his attorney felt there was no basis to dispute his status, as the pertinent documents were lost in the fire that injured him. He argued against the estoppel theories by contending that his status as an employee had not been decided in the workers' compensation action, by disputing that he had ever made a statement under oath or made a statement of fact as required for judicial estoppel, by arguing that Southern Energy did not lack knowledge of the truth as required for equitable estoppel, by asserting the workers' compensation court did not have power to grant all relief sought as required for res judicata, and by asserting that the issue had not been actually litigated under the collateral estoppel theory.

During depositions taken in the course of the proceedings, Mr. DiNovo affirmed that, at the time of the explosion, he believed he was an independent contractor:

Q. And, in fact, at the time of the accident, you told the investigators you were self-employed, an independent contractor. Correct?

A. Yes, sir, I told everybody.

Q. That was your understanding at the time?

A. Yes, sir.

Asked about his tax returns reflecting he was an employee, Mr. DiNovo acknowledged the documents were his tax returns but stated he did not remember the W-2 form attached to the return, observing, "once again, I always thought I was self-employed." Mr. DiNovo's own statement of undisputed material facts asserted, "On November 18, 2013, Plaintiff DiNovo believed that he was performing work as an independent contractor for Southern Energy."

Mr. DiNovo's wife, who was initially a party to the action but ultimately filed a voluntary nonsuit, submitted an affidavit stating that, at the time of the accident, she also believed Mr. DiNovo was an independent contractor because he did not receive employment benefits. She stated, "I was concerned as to how we were going to pay his massive medical bills because, as an independent contractor, my understanding was that [Mr. DiNovo] was not eligible for workers' compensation." She stated that someone from Southern Energy's insurance company called her after the accident and "said that [Mr.

DiNovo] would be receiving workers' compensation," and that this was the first time anyone had told her Mr. DiNovo might be eligible for workers' compensation.

Mr. DiNovo's workers' compensation attorney, Edward North, also filed an affidavit. He stated that his case notes indicated he contacted Amy Mitchell, Vice President of Southern Energy, and that she "confirmed that Michael Dinovo, Jr. was an employee." According to Mr. North, "Throughout the entire litigation, it was represented that Mr. Dinovo was an employee of Southern Energy." He stated that Southern Energy's insurance carrier confirmed Mr. DiNovo's pay rate and confirmed that all records converting him to an employee were destroyed in the fire. According to Mr. North, Mr. DiNovo's "status as an employee" was never "made an issue," and "we relied on the representations by Southern Energy Company and [the insurance company] that Mr. Michael Dinovo was converted to an employee on November 4, 2013." Mr. North averred that the DiNovos relied on the assurances of Southern Energy and its insurer "when agreeing to the workers compensation settlement."

Southern Energy filed a reply asserting that Mr. DiNovo's allegations of intentional misrepresentation were not supported by evidence and that the complaint had not alleged specific facts supporting the fraud theory. It reasserted that estoppel applied.

The trial court granted summary judgment to Southern Energy. The trial court determined that judicial estoppel, equitable estoppel, res judicata, and collateral estoppel all precluded seeking tort recovery against Southern Energy. The court further found, as relevant to the fraud allegations:

Mr. Dinovo argues Southern devised and orchestrated a fraudulent scheme to avoid liability for his injuries when it entered into a worker's compensation settlement with him while knowing he was an independent contractor. However, Mr. Dinovo offers no evidence to support this claim. The evidence weighs heavily against this argument, as Mr. Dinovo admits he and his wife believed Mr. Dinovo to be an independent contractor at the time of the accident, yet he knowingly entered into a workers' compensation settlement agreement, declaring himself to be an employee.

Mr. DiNovo moved to alter or amend, asserting that there were genuine issues of material fact regarding intentional misrepresentation. Mr. DiNovo argued that it was only after the deposition of Southern Energy's accountant, Burt Landers, that he became aware of any intentional misrepresentation. In particular, he stated that he was not aware until after the depositions that his conversion to an employee was supported only by statements made by Mr. King. He also pointed to Mr. Landers's testimony that Mr. DiNovo had been paid with vendor checks both before and after his alleged conversion to an employee and to Mr. Landers's testimony that Mr. Landers's only knowledge that Mr. DiNovo was an employee came from a conversation with Mr. King, who told Mr. Landers he had manually

changed Mr. DiNovo to an employee in the payroll.

Mr. DiNovo also appended material to this motion. He included an excerpt of his own deposition, in which he described the events after his injury. Mr. DiNovo stated that when he awoke in the hospital, his wife “thought I’d lied to her” because “I told her I was self employed and they turned around and told me I was on workmen’s comp.” The following exchange took place:

A. Well, like I said, she thought that I had lied to her about me being self employed.

Q. Okay. And what was your reaction to that at the time?

A. Still is. I’m self employed and I’m not an employee. I shouldn’t have workmen’s comp. This is a lie.

Q. All right. Let’s talk about that then. When you started getting the benefits, whether it was given to her or given to you when you woke up, did you talk with anybody at Southern Energy about why this was happening?

A. I’ve only seen those people twice since the accident.

Q. Did you talk with them at all about your getting workers’ compensation benefits?

A. No, Sir. That I recollect.

Q. All right. Now did you talk with anyone from [Southern Energy’s insurance company] about why you were getting workers’ compensation benefits when they first began?

A. I don’t believe I’ve ever talked to them either.

Mr. DiNovo clarified that his wife hired counsel while he was incapacitated in the hospital.

In response to the motion to alter or amend, Southern Energy defended the summary judgment ruling. In particular, it noted that Mr. DiNovo never alleged intentional misrepresentation on the part of Southern Energy itself, and it asserted that he failed to plead fraud with particularity. Mr. DiNovo countered that he alleged vicarious liability against Southern Energy and asserted he pled intentional misrepresentation with particularity against Mr. King. The trial court denied the motion to alter or amend, concluding that Mr. DiNovo had presented no grounds to revisit the summary judgment ruling.

Mr. DiNovo appealed to this court. A divided panel affirmed the trial court's decision based on a violation of Tennessee Rule of Appellate Procedure 27, without reaching the merits of Mr. DiNovo's arguments. *DiNovo v. Binkley (DiNovo I)*, No. M2023-00345-COA-R3-CV, 2024 WL 3517642, at *3 (Tenn. Ct. App. July 24, 2024) ("Based on Mr. DiNovo's failure to provide citations to the record within the section of his argument regarding the supposed viability of his fraud theory and a claim for misrepresentation, he has waived any issue regarding [the same.]; see also *id.* at *4-5 (Usman, J., dissenting). The Tennessee Supreme Court vacated *DiNovo I*, concluding that this court should have addressed the merits of the case because any briefing deficiencies did not impede appellate review. *DiNovo v. Binkley*, 706 S.W.3d 334, 336-37 (Tenn. 2025) ("At the very least, the Court of Appeals should have given DiNovo an opportunity to file a corrected brief containing the omitted citations rather than simply consider all his arguments waived with no notice to the parties."). The Tennessee Supreme Court then remanded the case back to this court with instructions to "consider DiNovo's appeal on the merits." *Id.* at 337.

II.

Under Tennessee Rule of Civil Procedure 56.04, a court may grant a party summary judgment on a claim when "the pleadings, depositions, answers to interrogatories, 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." Tenn. R. Civ. P. 56.04. We review an order granting summary judgment de novo, with no presumption of correctness. *Cotten v. Wilson*, 576 S.W.3d 626, 637 (Tenn. 2019). A party seeking summary judgment who does not bear the burden of proof at trial "may satisfy its burden of production either (1) by affirmatively negating an essential element of the nonmoving party's claim or (2) by demonstrating that the nonmoving party's evidence at the summary judgment stage is insufficient to establish the nonmoving party's claim or defense." *Rye v. Women's Care Ctr. of Memphis, M PLLC*, 477 S.W.3d 235, 264 (Tenn. 2015).

In response to a properly supported motion for summary judgment, "an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but his or her response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Tenn. R. Civ. P. 56.06. The nonmoving party may not merely assert "some metaphysical doubt as to the material facts." *Rye*, 477 S.W.3d at 265 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). Instead, it must "demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party." *Id.* The evidence relevant to a motion for summary judgment must be viewed in the light most favorable to the nonmoving party, with all reasonable inferences drawn in that party's favor. *Cotten*, 576 S.W.3d at 637. However, a failure to set forth specific facts showing a

genuine issue for trial will result in the court granting summary judgment. Tenn. R. Civ. P. 56.06.

III.

As noted above, Mr. DiNovo previously obtained a workers' compensation settlement as an employee of Southern Energy but then brought suit in tort. Southern Energy accordingly argued that Mr. DiNovo could not sue in tort because he was a statutory employee who had obtained a workers' compensation settlement as his exclusive remedy. Mr. DiNovo countered that he was not an employee but an independent contractor. In the motion for summary judgment, Southern Energy argued that Mr. DiNovo could not bring a tort suit because he was a statutory employee and that various estoppel doctrines prevented him from revisiting the determination that he was an employee. Mr. DiNovo replied that he was not bound by the prior determination of his employment due to intentional misrepresentation on the part of Southern Energy.

Mr. DiNovo's tort claims against Southern Energy are premised on establishing that he is an independent contractor who entered into the workers' compensation settlement as a result of Southern Energy's intentional misrepresentation that he was an employee. He relies on the theory of intentional misrepresentation as a means of circumventing the exclusivity of the remedy provided by workers' compensation.

Mr. DiNovo, for two reasons, has failed to establish a genuine issue of material fact regarding intentional misrepresentation. First, Mr. DiNovo did not create a genuine issue of material fact that any intentional misrepresentation was perpetrated by Southern Energy's agent Mr. King. Second, Mr. DiNovo did not create a genuine issue of material fact regarding reasonable reliance.

Foundationally, if Mr. DiNovo's designation as an employee in the settlement stands, he cannot sue in tort. "Under the Workers' Compensation Law, liability is determined on the basis of the employer-employee relationship." *Barber v. Ralston Purina*, 825 S.W.2d 96, 98 (Tenn. Ct. App. 1991). At the time that Mr. DiNovo was injured, the Tennessee's Workers' Compensation Law² provided:

Every employer and employee subject to this chapter shall, respectively, pay and accept compensation for personal injury or death by accident arising primarily out of and in the course and scope of employment without regard to fault as a cause of the injury or death

Tenn. Code Ann. § 50-6-103 (effective Oct. 1, 2011, to June 30, 2014); *see also*

² *See* Tenn. Code Ann. § 50-6-101 (providing that the statute should be cited as the "Workers' Compensation Law").

Leatherwood v. United Parcel Serv., 708 S.W.2d 396, 399 (Tenn. Ct. App. 1985) (“The benefits conferred by our Workers’ Compensation Act are purely statutory, and the circumstances under which they are paid and the manner in which they are calculated depend solely upon statutory authority.”). In exchange for a faultless system of employee compensation, workers’ compensation awards are “exclusive” under the law. Tenn. Code Ann. § 50-6-108(a) (effective Aug. 14, 2008, to June 30, 2014); *see also Curtis v. G.E. Cap. Modular Space*, 155 S.W.3d 877, 882 (Tenn. 2005) (explaining the development of workers’ compensation).

This exclusivity principle is expressly codified in the Workers’ Compensation Law, which states that

[t]he rights and remedies granted to an employee subject to this chapter, on account of personal injury or death by accident, including a minor whether lawfully or unlawfully employed, shall exclude all other rights and remedies of the employee, the employee’s personal representative, dependents or next of kin, at common law or otherwise, on account of the injury or death.

Tenn. Code Ann. § 50-6-108(a) (effective Aug. 14, 2008, to June 30, 2014). In general, “workers’ compensation law provides the exclusive remedy for an employee who is injured during the course and scope of his employment, meaning the employee is precluded from seeking tort damages for the injury.” *Valencia v. Freeland and Lemm Constr. Co.*, 108 S.W.3d 239, 242 (Tenn. 2003) (citing *Liberty Mut. Ins. Co. v. Stevenson*, 368 S.W.2d 760 (Tenn. 1963)). Accordingly, statutory employers “are protected from tort claims by injured employees.” *Coblentz v. Tractor Supply Co.*, — S.W.3d —, No. M2023-00249-SC-R11-CV, 2025 WL 3704465, at *6 (Tenn. Dec. 22, 2025) (observing that such employers may be liable in workers’ compensation for a subcontractor’s employee’s injury but are also protected by the exclusive remedy rule against tort liability). As we noted in *DiNovo I*, the parties generally accept that the exclusive remedy doctrine is implicated by Mr. DiNovo’s tort lawsuit. *See DiNovo I*, 2024 WL 3517642, at *3 & n.3 (“Through their appellate briefs in this matter, both sides acknowledge the general legal premise” of the exclusive remedy doctrine).

However, the Workers’ Compensation Law only embraces employment relationships and does not apply to independent contractors. *See Lindsey v. Trinity Commc’ns, Inc.*, 275 S.W.3d 411, 418 (Tenn. 2009); *Stratton v. United Inter-Mountain Tel. Co.*, 695 S.W.2d 947, 950 (Tenn. 1985). As such, independent contractors remain free to bring common law tort claims. *See* Tenn. Code Ann. § 50-6-112 (the injured person “may pursue the injured worker’s or their remedy by proper action in a court of competent jurisdiction against” some person other than the employer); *see also Coblentz*, — S.W.3d —, 2025 WL 3704465, at *5; *Barber*, 825 S.W.2d at 99 (employee could bring suit only if his immediate employer was an independent contractor and the defendant company was thus not his statutory employer). Mr. DiNovo, who now contends that he was an

independent contractor rather than an employee, argues that he only stated that he was an employee in the workers' compensation settlement due to the intentional misrepresentations of Southern Energy, which falsely told him that he was an employee at the time of the accident. Mr. DiNovo seeks to circumvent the exclusivity of the prior settlement on the basis of these alleged misrepresentations.

Significantly, Mr. DiNovo can only maintain an action in tort if he can relitigate his status as an employee, and he seeks to relitigate it by alleging intentional misrepresentation on the part of Southern Energy. Indeed, "[f]raud vitiates and avoids all human transactions, from the solemn judgment of a court to a private contract." *Shelby Elec. Co., Inc. v. Forbes*, 205 S.W.3d 448, 455 (Tenn. Ct. App. 2005) (quoting *New York Life Ins. Co. v. Nashville Tr. Co.*, 292 S.W.2d 749, 754 (Tenn. 1956)). We note here that "intentional misrepresentation," "fraudulent misrepresentation," and "fraud" constitute the same cause of action in Tennessee. *Hodge v. Craig*, 382 S.W.3d 325, 342 (Tenn. 2012) (recommending that courts use the phrase "intentional misrepresentation"). Mr. DiNovo argues that the misrepresentation perpetrated upon him caused him to forgo the remedies that should have been available to him as an independent contractor. The parties appear to agree that the intentional misrepresentation claim is Mr. DiNovo's avenue to challenge the binding and exclusive nature of the prior workers' compensation settlement.

Mr. DiNovo asserts in general that summary judgment is inappropriate for claims of intentional misrepresentation because such claims inherently turn on factual questions. However, this court has on numerous occasions concluded that summary judgment may be granted for intentional misrepresentation claims when the undisputed facts establish no genuine issue of material fact for trial. *See, e.g., Beard v. Odom*, No. E2024-00737-COA-R3-CV, 2025 WL 2017474, at *5 (Tenn. Ct. App. July 18, 2025) (plaintiffs could not establish they actually or reasonably relied on the statements); *Jackson v. CitiMortgage, Inc.*, No. W2016-00701-COA-R3-CV, 2017 WL 2365007, at *12 (Tenn. Ct. App. May 31, 2017) (concluding that plaintiffs were unable to show a misrepresentation and pretermitted an analysis of whether the statement was one of fact); *Finch v. O. B. Hofstetter/Anderson Tr.*, No. M2016-00562-COA-R3-CV, 2017 WL 2179951, at *5 (Tenn. Ct. App. May 16, 2017) (summary judgment was proper when the plaintiff failed to introduce proof of damages); *Town of Crossville Hous. Auth. v. Murphy*, 465 S.W.3d 574, 583 (Tenn. Ct. App. 2014) (plaintiff failed to meet the burden as to two defendants that the statements were made with the required mens rea). Accordingly, while many such claims may be more properly resolved by the trier of fact, *see Joseph Riccardi v. Carl Little Constr. Co., Inc.*, No. E2020-00678-COA-R3-CV, 2021 WL 3137251, at *9 (Tenn. Ct. App. July 26, 2021), we reject the contention that summary judgment is not an appropriate means of disposing of claims of intentional misrepresentation when the plaintiff cannot establish a genuine issue of material fact regarding one or more elements.

To establish a claim for intentional misrepresentation, Mr. DiNovo must demonstrate:

(1) that the defendant made a representation of a present or past fact; (2) that the representation was false when it was made; (3) that the representation involved a material fact; (4) that the defendant either knew that the representation was false or did not believe it to be true or that the defendant made the representation recklessly without knowing whether it was true or false; (5) that the plaintiff did not know that the representation was false when made and was justified in relying on the truth of the representation; and (6) that the plaintiff sustained damages as a result of the representation.

Hodge, 382 S.W.3d at 343. In the case at bar, Mr. DiNovo has failed to create a genuine issue of material fact regarding whether Mr. King made a misrepresentation and regarding the reasonableness of Mr. DiNovo's reliance.

A.

Mr. DiNovo argues on appeal that he has a viable claim of intentional misrepresentation against Southern Energy. Southern Energy counters that Mr. DiNovo's amended complaint did not adequately state a cause of action against Southern Energy for intentional misrepresentation. We conclude that, while the claim of respondeat superior liability connects Southern Energy to any intentional misrepresentation alleged against Mr. King, the trial court was correct that Mr. DiNovo introduced no proof that Mr. King made intentional misrepresentations to Mr. DiNovo. Accordingly, the court did not err in concluding there was no genuine issue of material fact regarding Mr. DiNovo's fraud claim.

Initially, Southern Energy's argument is premised on the fact that Mr. DiNovo did not separately list a cause of action for "intentional misrepresentation" regarding Southern Energy. However, Mr. DiNovo did allege respondeat superior liability against Southern Energy. In his cause of action for respondeat superior, Mr. DiNovo specifically alleged that Mr. King was an employee or agent of Southern Energy, that he was acting within the scope of his employment, and that "Southern Energy is liable for all of the above-described negligent and/or intentional acts or omissions of their employee, president, and/or agent Defendant Gary King."

"Under the doctrine of respondeat superior, an employer may be held vicariously liable for torts committed by its employee within the course and scope of his or her employment." *Heflin v. Iberiabank Corp.*, 571 S.W.3d 727, 735 (Tenn. Ct. App. 2018). To establish such a claim, the plaintiff must show that the person causing the injury was the principal's agent and was acting on the principal's business and within the scope of employment when the injury occurred. *Id.* Here, Mr. DiNovo adequately alleged that Southern Energy was liable for the tortious acts of its agent, Mr. King, committed in the scope of his employment. *See, e.g., Washington v. 822 Corp.*, 43 S.W.3d 491, 493-94

(Tenn. Ct. App. 2000) (a claim against the corporation was based on respondeat superior only).

Having established the applicability of the doctrine of respondeat superior, the problem for Mr. DiNovo then becomes meeting the standard for surviving summary judgment. As noted above, “to survive summary judgment, the nonmoving party ‘may not rest upon the mere allegations or denials of [its] pleading,’ but must respond, and by affidavits or one of the other means provided in Tennessee Rule 56, ‘set forth specific facts’ *at the summary judgment stage* ‘showing that there is a genuine issue for trial.’” *Rye*, 477 S.W.3d at 265 (quoting Tenn. R. Civ. P. 56.06). As pertinent here, “[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.” *Id.* If Mr. DiNovo’s evidence at the summary judgment stage is insufficient to establish a genuine issue of material fact regarding intentional misrepresentation, Southern Energy is entitled to summary judgment.

Mr. DiNovo has not established as a genuine issue of material fact that Southern Energy made a representation of past or present fact. Mr. DiNovo alleged in his complaint that Mr. King, subsequently to the explosion, “fraudulently attempted to claim that Mr. Dinovo was an employee of Southern Energy at the time of the incident,” and he alleged that Southern Energy was liable for Mr. King’s tortious conduct. Mr. DiNovo, however, introduced no proof at the summary judgment stage that Mr. King made this alleged misrepresentation prior to the settlement. In the materials submitted to the trial court, Mr. DiNovo in fact acknowledged that he had never spoken with anyone at Southern Energy about his workers’ compensation status. Mr. DiNovo was asked, “When you started getting the benefits . . . did you talk with anybody at Southern Energy about why this was happening?” He responded, “I’ve only seen those people twice since the accident,” and affirmed he did not recollect talking with them about getting workers’ compensation benefits.

Mr. DiNovo’s wife filed an affidavit stating that the insurance carrier for Southern Energy told her Mr. DiNovo would receive workers’ compensation and was an employee. Mr. DiNovo’s workers’ compensation attorney likewise filed an affidavit stating that the company’s vice president, Ms. Mitchell, “confirmed” that Mr. DiNovo was an employee. However, Southern Energy’s liability in the amended complaint was premised on the actions of Mr. King, not Ms. Mitchell or an insurance company. *See Randolph v. Meduri*, 416 S.W.3d 378, 388 (Tenn. Ct. App. 2011) (concluding that the “decision to name specifically these persons and their acts of negligence” in asserting respondeat superior liability in the complaint supported a limitation on proof at trial because “Plaintiff narrowed the scope of the dispute through her specific allegations with respect to” those employees). We note here that Tennessee Rule of Civil Procedure 9.02 requires pleading fraud with particularity. Southern Energy argues the allegations against Mr. King are insufficiently particular. Even assuming that these allegations met the particularity requirement as to Mr. King, they are certainly insufficiently particular as to Ms. Mitchell or the insurance

company. Mr. DiNovo's complaint was not amended after he added Southern Energy and Mr. King as defendants.

Mr. DiNovo's theory of liability for Southern Energy was pled as respondeat superior liability for Mr. King's actions. Ultimately, at the summary judgment stage, Mr. DiNovo introduced no proof that, after the accident, Mr. King made any representations at all to Mr. DiNovo, Mr. DiNovo's wife, or Mr. DiNovo's workers' compensation attorney regarding Mr. DiNovo's status as an employee. Accordingly, Mr. DiNovo failed to create a genuine issue of material fact that Southern Energy was, as alleged in the complaint, liable for the intentional misrepresentation of its agent, Mr. King. The trial court was justified in observing that "Mr. Dinovo offer[ed] no evidence to support this claim" and in granting summary judgment on this basis.

B.

Additionally, Mr. DiNovo failed to create a genuine issue of material fact on the element of reasonable reliance. In order to establish his cause of action of intentional misrepresentation, Mr. DiNovo needed to show that he "did not know that the representation was false when made and was justified in relying on the truth of the representation." *Hodge*, 382 S.W.3d at 343. However, the record on summary judgment establishes both that Mr. DiNovo was aware of the facts from which Southern Energy concluded that he was an employee and that he did not believe he was an employee but always thought he was an independent contractor. Accordingly, we conclude that he cannot show that any reliance was reasonable, and the trial court did not err in granting summary judgment.

Foundationally, "[j]ustifiable reliance . . . is a necessary element in a cause of action based upon negligent or fraudulent misrepresentation." *Homestead Grp., LLC v. Bank of Tenn.*, 307 S.W.3d 746, 752 (Tenn. Ct. App. 2009); *see SecurAmerica Bus. Credit v. Schledwitz*, No. W2012-02605-COA-R3-CV, 2014 WL 1266121, at *21 (Tenn. Ct. App. Mar. 28, 2014). "Justifiable or reasonable reliance involves two different issues: whether the plaintiff actually relied on the misrepresentation and whether that reliance was reasonable." *Pritchett v. Comas Montgomery Realty & Auction Co., Inc.*, No. M2014-00583-COA-R3-CV, 2015 WL 1777445, at *3 (Tenn. Ct. App. Apr. 15, 2015). "[T]he burden is upon the plaintiff to show that its reliance upon any statements defendants may have made was reasonable." *Metro. Gov't of Nashville & Davidson Cnty. v. McKinney*, 852 S.W.2d 233, 238 (Tenn. Ct. App. 1992); *see SecurAmerica Bus. Credit*, 2014 WL 1266121, at *21.

Mr. DiNovo argues strenuously that reasonable reliance is a fact question which does not lend itself to summary judgment. He is correct insofar as reasonable reliance is generally a question of fact. *Davis v. McGuigan*, 325 S.W.3d 149, 158 (Tenn. 2010). "However, [Tennessee courts] have granted summary judgment on the reasonable reliance

element when the evidence in the record could lead a reasonable jury to only one conclusion, that the plaintiff had information that contradicted the alleged misrepresentation.” *Beard*, 2025 WL 2017474, at *5 (citing *Annaco, Inc. v. Corbin*, No. 02A01-9804-CH-00111, 1998 WL 929637, at *4 (Tenn. Ct. App. Dec. 31, 1998)); see *Erwin v. Great River Rd. Supercross, LLC*, No. W2019-01005-COA-R3-CV, 2020 WL 7055351, at *3 (Tenn. Ct. App. Dec. 1, 2020) (reversing as a matter of law the trial court’s determination that reliance was reasonable); *Boals v. Murphy*, No. W2013-00310-COA-R3-CV, 2013 WL 5872225, at *18 (Tenn. Ct. App. Oct. 30, 2013) (summary judgment was appropriate when the plaintiffs did not show they “ever knew of or relied upon those misrepresentations in any way”); *Laundries, Inc. v. Coinmach Corp.*, No. M2011-01336-COA-R3-CV, 2012 WL 982968, at *5 (Tenn. Ct. App. Mar. 20, 2012).

In general, “a party dealing on equal terms with another is not justified in relying upon representations where the means of knowledge are readily within his reach.” *Erwin*, 2020 WL 7055351, at *3 (quoting *Solomon v. First Am. Nat’l Bank of Nashville*, 774 S.W.2d 935, 943 (Tenn. Ct. App. 1989)); see also *McKinney*, 852 S.W.2d at 239. For example, in *Lapinsky v. Cook*, the parties entered into a contract for the sale of a home, and the plaintiffs testified that, when the plaintiffs conducted the final inspection, the agreed-upon repairs were not completed adequately. 536 S.W.3d 425, 428-29 (Tenn. Ct. App. 2016). This court concluded that the plaintiffs “cannot have reasonably relied upon any representations made by [the defendants] that repairs had been done because [they] knew otherwise.” *Id.* at 443-44. Likewise, in *Beard*, the plaintiffs sued for alleged defects in a home after testifying that they noticed defects during the inspection. *Beard*, 2025 WL 2017474, at *1-2. This court concluded that “the reasonableness of Plaintiffs’ purported reliance on the Disclosure Statement is completely undermined by the undisputed fact that Plaintiffs noticed ‘obvious’ defects during their visits that directly contradicted the Disclosure Statement.” *Id.* at *5. Fundamentally, “[i]f a plaintiff claims to have relied on the defendant’s statements in the face of obvious indications that the statements were false, one may doubt that the plaintiff meaningfully relied at all.” *Id.* (quoting Restatement (Third) of Torts: Liab. for Econ. Harm § 11, cmt. d (Am. L. Inst. 2020)).

The allegedly false statement at issue here is Mr. DiNovo’s employment status.³ Workers’ compensation requires employers to compensate workers for injuries occurring in the course of their employment. *Lindsey v. Trinity Commc’ns, Inc.*, 275 S.W.3d 411, 418 (Tenn. 2009). To recover benefits, the worker must be an employee. *Id.* Courts examine the factors set forth in Tennessee Code Annotated section 50-6-102(10)(D) in

³ To survive summary judgment, Mr. DiNovo had to establish, as an element of intentional misrepresentation that Southern Energy “made a representation of a present or past *fact*” that was false when made. *Hodge*, 382 S.W.3d at 343 (emphasis added). Mr. DiNovo, in opposing estoppel, correctly asserts that employment status is a question of law and not a statement of fact. *Lindsey v. Trinity Commc’ns, Inc.*, 275 S.W.3d 411, 418 (Tenn. 2009). Mr. DiNovo does not grapple with the implications of this assertion for his own intentional misrepresentation claim, and we resolve the appeal on other grounds.

determining whether an individual is an employee or an independent contractor:

- (i) The right to control the conduct of the work;
- (ii) The right of termination;
- (iii) The method of payment;
- (iv) The freedom to select and hire helpers;
- (v) The furnishing of tools and equipment;
- (vi) Self-scheduling of working hours; and
- (vii) The freedom to offer services to other entities

Tenn. Code Ann. § 50-6-102(10)(D) (effective July 1, 2012 to June 30, 2014); *see Cont'l Cas. Co. v. Theraco, Inc.*, 437 S.W.3d 841, 849 (Tenn. Ct. App. 2014).

A significant portion of Mr. DiNovo's briefing on appeal is dedicated to examining these factors in arguing that he was in fact an independent contractor. For instance, he asserts that he had the right to control his own work because he was the expert in biodiesel production; that he never filled out federal tax forms for Southern Energy; that Southern Energy did not make tax or insurance deductions from his checks and paid him with vendor checks; that he did not receive overtime when he worked more than 40 hours; that he had the freedom to hire an assistant from his own funds; that he was able to select his own schedule and control the number of hours he worked; and that his relationship with Southern Energy was not exclusive. He argues that five of the seven factors weigh in favor of finding him an independent contractor. This argument would have been helpful to Mr. DiNovo had he chosen to contest his status as an employee prior to the workers' compensation settlement.

However, as relevant to the misrepresentation claim in this appeal, Mr. DiNovo's independent contractor argument rests on a foundation of various facts — that no one told Mr. DiNovo how much biodiesel to make; that Mr. DiNovo never filled out federal tax forms, received benefits or overtime, or had funds withheld from his pay; that he decided how many hours to work and when, etc. However, Mr. DiNovo was aware of these facts at the time that he entered into the workers' compensation settlement. He does not allege or provide support for the proposition that Southern Energy misrepresented any of these facts.⁴ Mr. DiNovo was represented by Mr. North during the workers' compensation settlement, and Mr. North likewise makes no allegation that Southern Energy somehow misrepresented the facts underlying the legal conclusion that Mr. DiNovo was an employee. Mr. North presumably was responsible for being aware that Mr. DiNovo's employment status could be contested based on the factors above.

⁴ Mr. DiNovo asserts he was not aware until depositions were taken that he was paid with vendor checks rather than payroll checks, but he does not assert Southern Energy somehow deceived him in this regard.

Additionally, throughout the proceedings, Mr. DiNovo strenuously maintained that he never accepted the statement that he was an employee as accurate. Mr. DiNovo's own statement of undisputed material facts asserted that "On November 18, 2013, Plaintiff DiNovo believed that he was performing work as an independent contractor for Southern Energy." In the summary judgment proceedings, he appended materials in which he testified, "I always thought I was self-employed." His wife submitted an affidavit likewise asserting that she had believed he was an independent contractor. Mr. DiNovo appended material to his motion to alter or amend in which he testified that he thought, both at the time of the accident and the time of the deposition, that the assertion he was an employee was "a lie."

Reliance is evaluated by the examination of a number of factors: "the plaintiff's sophistication and expertise in the subject matter of the representation, the type of relationship—fiduciary or otherwise—between the parties, the availability of relevant information about the representation, any concealment of the misrepresentation, any opportunity to discover the misrepresentation, which party initiated the transaction, and the specificity of the misrepresentation." *Davis*, 325 S.W.3d at 158. While Mr. DiNovo may not have had the sophistication of Southern Energy, he was represented by counsel who was responsible for being aware of the importance of the issue. There was an adversarial rather than fiduciary relationship between the parties, who were negotiating a settlement, and Mr. DiNovo had access to the determinative facts. There is no allegation that Southern Energy concealed any specific relevant facts, and the alleged misrepresentation was a general legal conclusion. *See id.* Moreover, like the plaintiffs in *Lapinsky* and *Beard*, Mr. DiNovo claims he reasonably relied on the statement that he was an employee in the face of a record demonstrating that he thought it was "a lie" and demonstrating that he was aware of facts which contradicted the claim. *See Beard*, 2025 WL 2017474, at *5; *Lapinsky*, 536 S.W.3d at 443-44.

In short, the undisputed facts here demonstrate that both parties were aware that Mr. DiNovo might have been an independent contractor. Mr. DiNovo, knowing that he controlled his own work, chose his own hours, and was not subject to tax withholding or benefits, nevertheless chose not to seek a tort recovery or contest his status as an employee, but instead accepted a perhaps smaller, but more certain, payout under workers' compensation. *See Valencia*, 108 S.W.3d at 243 ("Those who accept benefits under an act of this kind must likewise take the burdens." (quoting *King v. Ross Coal Co. Inc.*, 684 S.W.2d 617, 619 (Tenn. Ct. App. 1984))). Not only was Mr. DiNovo in possession of the bulk of the facts he now relies upon to establish that he was an independent contractor, but he also testified repeatedly that he did not believe Southern Energy's representation that he was an employee. Accordingly, Mr. DiNovo "had information that contradicted the alleged misrepresentation." *Beard*, 2025 WL 2017474, at *5. Mr. DiNovo relies on a claim for intentional misrepresentation to unravel the workers' compensation determination that he is an employee. However, we conclude that he has not created a genuine issue of material fact on this claim. The trial court likewise found that Mr. DiNovo believed himself "to be

an independent contractor at the time of the accident, yet he knowingly entered into a workers' compensation settlement agreement, declaring himself to be an employee." We conclude there is no genuine issue of material fact regarding reasonable reliance, and that the court did not err in granting summary judgment on the intentional misrepresentation claim on this basis.

IV.

On appeal, Mr. DiNovo's brief relies on his intentional misrepresentation claim in arguing against the estoppel theories asserted by Southern Energy. To the extent that Mr. DiNovo presents a secondary argument that, even absent fraud, Southern Energy's estoppel theories do not apply,⁵ Southern Energy has established the elements of the doctrine of collateral estoppel.

Collateral estoppel "is a court-made doctrine that bars the same parties from relitigating in a second suit issues that were raised and determined in a prior suit." *White v. Bradley Cnty. Gov't*, 639 S.W.3d 568, 579 (Tenn. Ct. App. 2021). It applies to both factual and legal determinations. *Id.* Collateral estoppel is a doctrine of issue preclusion which "promotes finality, conserves judicial resources, and prevents inconsistent decisions." *Bowen ex rel. Doe v. Arnold*, 502 S.W.3d 102, 107 (Tenn. 2016) (quoting *Mullins v. State*, 294 S.W.3d 529, 534 (Tenn. 2009)).

⁵ Mr. DiNovo's brief lists three roman numeral headings as the issues presented for review:

I. This Court should reverse the trial court's granting of summary judgment as the facts show that the Plaintiff Michael DiNovo performed work for the Defendant Southern Energy Company as an independent contractor.

II. This Court should reverse the trial court's granting of summary judgment as there are genuine issues of material fact that exist regarding Plaintiffs' claim of intentional misrepresentation, and the claim of intentional misrepresentation is an issue of fraud that must be reserved for the trier of fact.

III. This Court should reverse the trial court's granting of summary judgment as the plaintiffs' claims are not barred by the estoppel doctrines because the workers compensation agreement was the product of fraud.

Under the third heading, Mr. DiNovo argues in a subheading, "Due to Southern's fraudulent acts, Plaintiffs' claims are not barred by the estoppel doctrines." We note that the first issue listed cannot independently secure relief without revisiting the workers' compensation settlement. Accordingly, it is mainly relevant to the falsity of Southern Energy's statements as a premise for intentional misrepresentation, because fraud is the means by which Mr. DiNovo seeks to revisit the settlement's determinations regarding employment status. Therefore, all of the relief sought in the headings of the appellate brief is premised on the fraud claim. However, Mr. DiNovo also presents argument that the elements of various estoppel doctrines are not met, and Southern Energy responds to these arguments in its brief.

Mr. DiNovo also cites Tennessee Code Annotated section 29-34-102, regarding the rescission of fraudulent settlements, but he provides no argument relating to this provision, and insofar as it is raised, the issue is waived. *See Sneed v. Bd. of Pro. Resp. of Sup. Ct. of Tenn.*, 301 S.W.3d 603, 615 (Tenn. 2010).

“Whether collateral estoppel applies to a particular set of facts is a question of law.” *White*, 639 S.W.3d at 577. The Tennessee Supreme Court has described the requirements of collateral estoppel as follows:

To prevail with a collateral estoppel claim, the party asserting it must demonstrate (1) that the issue to be precluded is identical to an issue decided in an earlier proceeding, (2) that the issue to be precluded was actually raised, litigated, and decided on the merits in the earlier proceeding, (3) that the judgment in the earlier proceeding has become final, (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier proceeding, and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier proceeding to contest the issue now sought to be precluded

Mullins, 294 S.W.3d at 535. “Moreover, in order for the doctrine of collateral estoppel to apply, the issue must not only have been actually litigated and decided, it must also have been necessary to the judgment.” *Id.*

Mr. DiNovo does not dispute that the issue is identical, that the judgment is final, that the parties are identical, and that there was a full and fair opportunity to litigate the matter. Instead, Mr. DiNovo argues on appeal that collateral estoppel does not apply because his employment status was not actually raised, litigated, or determined in the workers’ compensation settlement. Mr. DiNovo asserts that “[t]here is no evidence that the Specialist ever considered [Mr. DiNovo’s] employment status.”

However, the prior decision was entirely premised on the determination that Mr. DiNovo was an employee. “For an issue to be ‘actually litigated’ for the purpose of applying the doctrine of collateral estoppel, it must have been ‘properly raised, by the pleadings or otherwise, and . . . submitted for determination, and . . . determined.’” *Mullins*, 294 S.W.3d at 536 (quoting Restatement (Second) of Judgments § 27 cmt. d (Am. L. Inst. 1982)). The requirement, however, “does not imply that the issue must have been litigated in a full evidentiary and adversarial trial.” *Id.* Mr. DiNovo’s employment status was not the subject of testimony; that is, the parties agreed at the time that he was an employee of Southern Energy. However, the issue was foundational to the prior determination that Mr. DiNovo was entitled to relief under the Workers’ Compensation Law.

The settlement agreement recites that Mr. DiNovo “was employed by [Southern Energy] and engaged in activity arising out of and in the course and scope of employment” at the time of the accident. The Specialist approved the settlement, giving it the same standing as a judgment entered by a court of record. The agreement was entered into and approved under the Tennessee Workers’ Compensation Law.

Crucially, “[t]he Tennessee Workers’ Compensation Act covers only ‘employees.’” *Warner v. Barney Potts*, No. M2003-02494-SC-WCM-CV, 2005 WL 995236, at *2 (Tenn. Workers Comp. Panel Apr. 29, 2005); *see Yardley v. Hosp. Housekeeping Sys., LLC*, 470 S.W.3d 800, 805 (Tenn. 2015) (“The Act applies to employers and employees” as those terms are statutorily defined). When the person seeking relief is “not an employee,” the employer “ha[s] no obligation . . . under the Act.” *Yardley*, 470 S.W.3d at 805. As pertinent here, an independent contractor cannot receive benefits under the Workers’ Compensation Law. *Lindsey v. Trinity Commc’ns, Inc.*, 275 S.W.3d at 418; *Lindsey v. Smith & Johnson, Inc.*, 601 S.W.2d 923, 925 (Tenn. 1980). Accordingly, a determination of Mr. DiNovo’s employment status was necessary to provide relief under the Workers’ Compensation Law.

This court has previously applied issue preclusion when a determination was foundational to the prior judgment. In *In re Bridgestone/Firestone*, the court had previously affirmed the dismissal of a set of lawsuits based on the doctrine of *forum non conveniens*, when it appeared Mexico was a viable alternative forum. 286 S.W.3d 898, 901 (Tenn. Ct. App. 2008). The subsequent cases filed in Mexico were dismissed, mainly on jurisdictional grounds. *Id.* The suits were refiled in Tennessee, and the defendants asserted that collateral estoppel prevented relitigation of the determination that Mexico was a suitable forum. *Id.* at 902. This court noted that the doctrine of *forum non conveniens* “presupposes that there is at least one other forum in which the plaintiff may litigate his claim.” *Id.* at 905. Accordingly, the determination that another forum was available was “necessary” to the prior decision. *Id.* This court concluded that preclusion could apply to the finding underlying the *forum non conveniens* dismissal — that Mexico was an available forum — because that finding, while made by the appellate rather than trial court, was “necessary” to the dismissal. *Id.* at 909. However, the court determined that equitable principles required a determination of whether the cases in Mexico were dismissed after a good faith prosecution or whether the plaintiffs had manipulated dismissal to obtain another chance to refile in Tennessee. *Id.*; *see In re Bridgestone/Firestone*, 495 S.W.3d 257, 268 (Tenn. Ct. App. 2015) (“Because the doctrine of *forum non conveniens* ‘presupposes [that] there is at least one [available alternative] forum,’ . . . in which plaintiffs may bring their case, the availability of the Mexican courts is an issue that was ‘actually litigated’ by necessity.”); *see also Nye v. Ohio Bd. of Exam’rs of Architects*, 847 N.E.2d 46, 50 (Ohio Ct. App. 2006) (“Moreover, because appellant’s factual admissions were incorporated into the agreed judgment entry, RLC’s civil action is deemed actually litigated and determined.”); *City of Nanticoke v. W.C.A.B. (Ziolkowski)*, 828 A.2d 462, 467-68 (Pa. Commw. Ct. 2003) (concluding that the city was estopped from relitigating an employee’s eligibility for special workers’ compensation benefits because the payments indicated the issue was actually litigated, and alternatively finding waiver).

Here, the settlement agreement and the Specialist’s approval are entirely premised on the determination that Mr. DiNovo was a statutory employee. For that reason, the

determination should be given preclusive effect in the present litigation as a foundational determination necessary to the prior judgment.

Insofar as Mr. DiNovo challenges whether any of the estoppel theories apply on a basis other than intentional misrepresentation, which was addressed above, we conclude that Mr. DiNovo is prevented under collateral estoppel from relitigating his employment status, which was foundational to the workers' compensation settlement that was approved by the Specialist and took on the force of a judgment of a court of record. We pretermitt an analysis of the other estoppel issues raised by Southern Energy. Because collateral estoppel applies and because Mr. DiNovo has not met the elements of intentional misrepresentation, Mr. DiNovo must be bound by the prior determination that he is an employee. As such, he cannot bring a tort claim against his employer.

V.

For the aforementioned reasons, we affirm the judgment of the Circuit Court for Davidson County. Costs of this appeal are taxed to the appellant, Michael DiNovo, Jr., for which execution may issue if necessary.

s/ Jeffrey Usman
JEFFREY USMAN, JUDGE