

2002

Ilia Dennis, Plaintiff/Appellant vs. David Vasquez, Defendant/Appellee : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ILIA DENNIS,

Plaintiff/Appellant

vs.

DAVID VASQUEZ,

Defendant/Appellee.

Case No. 010906455 PI

Appeal No. 20020415-CA

Priority 15

**BRIEF OF APPELLEE
REQUEST FOR ORAL ARGUMENT**

Appeal from the Third Judicial District Court of
Salt Lake County, State of Utah
Honorable Glenn K. Iwasaki

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PARTIES TO THE PROCEEDING

All parties to this proceeding are identified in the caption. Appellant, the Plaintiff below, is Ilia Dennis. Appellee, the Defendant below, is David Vasquez.

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JURISDICTION OF THE COURT

The Utah Court of Appeals has jurisdiction to hear this appeal pursuant to Utah Code Ann. § 78-2a-3. This is an appeal by Plaintiff/Appellant from a final order granting summary judgment in the Third District Court of Salt Lake County, State of Utah.

STATEMENT OF THE ISSUES

1. Did the trial court commit reversible error in finding that the claims preclusion branch of res judicata prevents Appellant from bringing a subsequent claim for personal injury after first losing on the merits in small claims court in a property damage claim with both claims arising out of the same automobile accident?

STANDARD OF REVIEW

Summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah Rules of Civil Procedure, Rule 56; Ault v. Holden, 44 P.3d 781, 787 (Utah 2002).

The reviewing court may affirm a grant of summary judgment on any grounds available to the trial court even if it is not one relied upon below. Higgins v. Salt Lake County, 855 P.2d 231 (Utah 1993).

In an appeal from a summary judgment the Court may reject arguments not made at the trial level. Olson v. Park & Craig Olsen, Inc., 815 P.2d 1356 (Utah Ct. App. 1991).

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

1. Rule 56, Utah Rules of Civil Procedure.

STATEMENT OF THE CASE

On February 23, 2001, Ilia Dennis (hereinafter “Dennis”), while represented by counsel (R. 65; Addendum A), filed a small claims action against Appellee David Vasquez (hereinafter “Vasquez”) (Case No. 01820063) (Addendum B) to collect property damages arising out of an automobile collision which occurred on October 6, 2000. (R. 20.) At the small claims hearing the court entered a judgment of “no cause of action.” (R. 20; Addendum C.)

Dennis brought this action on July 26, 2001 in the Third District Court for personal injuries claimed to be sustained in the same motor vehicle accident with Vasquez occurring on October 6, 2000. (R. 2.)

Vasquez filed a motion for summary judgment on the grounds that the res judicata barred Dennis from splitting his cause of actions and filing a lawsuit twice for the same accident. (R. 27-39.) Specifically, it was argued that the claims preclusion branch of res judicata was a bar to Dennis bringing a second lawsuit based upon the same accident and occurrence.

Dennis argued that the elements of the claims preclusion branch of res judicata had not been met. (R. 40-47.) Dennis alleged that the judgment of the small claims court was not on the merits and further argued that negligence issues had not been litigated. (R. 40-47, 95.)

On March 22, 2002, the Third District Court issued a memorandum decision granting the motion for summary judgment based on the doctrine of the claims preclusion branch of res judicata and held that Dennis' claim was therefore barred. (R. 74-78.) On May 6, 2002, the court entered an order granting summary judgment based upon its memorandum decision. (R. 79-83; Addendum D.) Dennis filed a notice of appeal on May 24, 2002. (R. 84-85.)

STATEMENT OF FACTS

1. On October 6, 2000, Dennis was involved in an automobile collision with Vasquez at the intersection of 14400 South and Pony Express Road in Salt Lake County, State of Utah. As a result of the collision Dennis claims he sustained bodily injuries and property damage to his vehicle. (R. 2-3; Addendum B)

2. On February 23, 2001, Dennis, with his counsel's paralegal present (R. 95, p. 13, lines 9-22) filed a small claims action for property damage arising out of the October 6, 2000, collision with Dennis. (Addendum B)

3. Dennis was at all times represented by counsel for the accident of October 6, 2000. The attorney's paralegal went with Dennis to the small claims trial. (R. 65; R. 95, p. 2, lines 20-25; p. 3, lines 1-8; p. 12, lines 10-25; p. 13, lines 1-25.)

4. On March 29, 2001, the small claims court entered judgment indicating "no cause of action" against Dennis and in favor of Vasquez. (R. 30; Addendum C.)

5. At the time the small claims lawsuit was filed on March 29, 2001, Dennis had already completed his medical treatment for the October 6, 2000, accident as of December 22, 2000. (R. 66; Addendum E.)¹

6. Vasquez did not file any appeal from the small claims judgment. (R. 1-95.)

7. On July 19, 2001, Dennis filed, with "of counsel" of the same firm he had at the time of the small claims trial, a second lawsuit, this time claiming personal injury damages. (R. 1-4, 65, 95.)

¹ Addendum E was served on Vasquez in this lawsuit as part of Dennis' initial disclosures on November 30, 2002. (R. 16, 46.) Addendum E is a summary of medical expenses incurred by Dennis for treatment as of November 30, 2001, when the initial disclosures were served. Dennis' medical expenses as shown in Addendum E clearly indicate the last medical treatment Dennis received was on December 22, 2000. The treatment claimed as the medical expenses incurred in the present lawsuit already existed and had been incurred at the time Dennis filed his small claims action on February 23, 2001.) (Addendum B, E.)

8. On December 12, 2001, a motion for summary judgment was filed by Vasquez claiming Dennis' claim was barred by the doctrine of res judicata. Under the claims preclusion branch of res judicata Dennis argued the small claims judgment was final and on the merits, that the parties were identical, and that all of Dennis' claims from the October 6, 2000, accident could have and should have been filed in one lawsuit at the same time. (R. 27-47.)

9. On December 24, 2001, Dennis filed his opposition arguing that the issues were not identical, the small claims judgment was not final, and that equity principles applied. (R. 40-47.)

10. A hearing with argument was held at the trial court on March 18, 2002. (R. 95.)

11. On March 22, 2002, the trial court issued a memorandum decision granting the Vasquez's motion for summary judgment. (R. 74-78.)

12. The court entered a final order which was filed on March 23, 2002. (R. 79-82; Addendum D.) Dennis filed a notice of appeal on May 23, 2002. (R. 84-85.)

SUMMARY OF THE ARGUMENT

Dennis brought two separate actions, one for property damage and the other for personal injuries. Both actions arose out of the same automobile accident of October 6, 2000.

At the time Dennis brought his small claims action on February 23, 2001, he was represented by counsel and had completed his medical treatment for the accident. (R. 65, 66.) The Small Claims Court entered a judgment indicating “no cause of action.” However, Dennis failed to combine into one lawsuit his claims for personal injury and property damage.

Dennis thereafter filed this action in the Third District Court in which the court granted summary judgment on the grounds of claims preclusion.

Under Madsen v. Borthick, 769 P.2d 245 (Utah 1988), the claims preclusion branch of res judicata bars the present action for personal injuries because (1) both cases involve the same parties; (2) Dennis could have brought in a court of competent jurisdiction both the personal injury and the property damage claims; and (3) the small claims court entered a judgment for “no cause of action” which became a final judgment on the merits.

Dennis’ argument about an “equity” exception does not apply as Dennis had a legal remedy to file in a court of competent jurisdiction and failed to do so. This is not a case

similar to authority cited in Dennis' brief where no attorneys are allowed in Small Claims Court and Dennis brought an action before medical bills were incurred. The opposite is true. Dennis was represented and had fully completed treatment prior to filing the small claims action for personal injuries. Instead of filing the appropriate lawsuit for all claims Dennis attempted to make a claim on property damage already resolved. It was an attempt by Dennis to misuse the courts that has caused his claims to be barred rather than some unjust system.

ARGUMENT

I. THE TRIAL COURT PROPERLY ENTERED SUMMARY JUDGMENT ON THE CLAIMS PRECLUSION BRANCH OF RES JUDICATA.

Dennis failed to assert his claim for bodily injury in the Small Claims Court proceeding. Dennis is barred by the res judicata branch known as claim preclusion.

Claim preclusion bars a cause of action only if the suit in which that cause of action is being asserted and the prior suit satisfy the following requirements:

1. Both cases must involve the same parties or their privies;
2. The claim that is alleged to be barred must have been presented in the first suit **or must have been one that could and should have been raised in the first action; and**
3. The first suit must have resulted in a final judgment on the merits.

Madsen v. Borthick, supra. (Emphasis added).

A. Both Lawsuits Involved The Same Parties Or Their Privies

The first element requiring that both cases involve the same parties or their privies is unquestionably met in the subject case. Ilia Dennis was the Plaintiff and David Vasquez was the Defendant in both lawsuits filed in district court and the lawsuit filed in Small Claims Court. Both cases arise out the events of the October 6, 2000, automobile accident.

B. The Third District Court Lawsuit For Personal Injuries Could Have And Should Have Been Brought At The Time The Small Claims Lawsuit Was Contemplated

The second element of Madsen, supra., requiring that the claim alleged to be barred must have been either (1) presented in the first suit, or (2) must be one that should and could have been raised in the first action, has also been met.

Swainston v. Intermountain Health Care, Inc., 766 P.2d 1059, 1061 (Utah 1988), defines a claim or cause of action as:

A claim is the situation or state of facts which entitles a party to sustain an action and gives them the right to seek judicial interference on his behalf. A claim petitions a court to award a remedy for injury suffered by the plaintiff. A cause of action is necessarily comprised of specific elements which must be proven before relief is granted. A claim or cause of action is resolved by judicial pronouncement providing or denying the requested remedy.

Dennis' claims for personal injury were not asserted in the small claims action. The small claims lawsuit specifically requests damages for property. (Addendum B.) However, the injury claims could and should have been raised because they arose from the same events and occurrences as the property damage claim. Utah courts have specifically held that small claims courts have subject matter jurisdiction over personal injury claims. Kawamoto v. Fratto, 994 P.2d 187 (Utah 2000). Furthermore, the action could have been brought in the district court combining all the damages sought from the one accident.

In American Estate Mgmt. Corp. v. International, 986 P.2d 765 (Utah Ct. App. 1999), the appellant filed an adverse possession claim for ownership of a parking lot. The appellant's suit was the second suit it had filed to determine the property rights of the parties regarding the parking lot. The court analyzed the issue of claim preclusion based on the three elements stated in Madsen, supra. The court found that the appellant could and should have brought the adverse possession claim in the first suit. The court stated that claim preclusion reflects the expectation of the parties who are given the capacity to present their "entire controversies" shall in fact do so in the same action.

Restatement of the Law, Second, Judgments § 24, has been adopted in Utah. See Ringwood v. Foreign Auto Works, Inc., 786 P.2d 1350, 1357 (Utah Ct. App. 1990) (cert denied, 795 P.2d 1138 (Utah 1990)).

Restatement of the Law, Second, Judgments § 24, states :

(1) When a valid and final judgment rendered in an action extinguishes the appellant's claim pursuant to the rules of merger or bar (see §§ 18, 19), **the claim extinguished includes all rights of the appellant to remedies against the appellee with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.**

(2) What factual grouping constitutes a "transaction," and what groupings constitute a "series," are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

(emphasis added)

Clearly section 24 of the Restatements of Judgments contemplates that when someone is involved in an automobile accident, claims that arise out of the same set of operative facts constitute a "transaction," and that all the remedies that arise out of such transaction must be sought in the first lawsuit. Otherwise Dennis could first bring an action for damage to his car, then an action for loss of use, then medical bills, lost of income, etc. The purpose of the claims preclusion doctrine is to ensure that Dennis brings all his claims in one in one suit so that such claims can be finalized and for the sake of judicial economy.

In the comments and illustrations to section 24 of the Restatement of Judgments, the same basic fact pattern as has occurred in the present case was illustrated.

Illustrations:

1. A and B, driving their respective cars, have a collision injuring A and damaging his car. The occurrence is single, and so is A's claim. If A obtains a judgment against B on the ground of negligence for the damage to the car, he is prevented by the doctrine of merger from subsequently maintaining an action for the harm to his person.
2. The facts are the same as in Illustration 1, except that B obtains a judgment on the ground that A has failed to prove B's negligence. The preclusion is the same, but explained by the doctrine of bar.

Restatements of Judgments Second, § 24, Illustrations 1 and 2.

The same fact pattern above is what occurred with Dennis in the present case. Dennis sued for property damages in Small Claims Court and at trial a "no cause of action" judgment was entered. He is barred from bringing a second action for different damages from the same automobile accident.

Restatements of Judgment, § 24 also includes in the comments § g.

g. When the jurisdiction of the court is limited. The rule stated in this Section as to splitting a claim is applicable although the first action is brought in a court which has no jurisdiction to give a judgment for more than a designated amount. When the plaintiff brings an action in such a court and recovers judgment for the maximum amount which the court can award, he is precluded from thereafter maintaining an action for the balance of his claim. See Illustrations 13 and 15. It is assumed here that a court was available to the plaintiff in the same system of courts – say a court of general jurisdiction in the same state – where he could have sued for the entire amount.

The comments of Restatements § 24 includes the following illustrations regarding the above:

Illustration:

13. A bring an action against B for negligently causing his personal injury. Instead of suing in a court of general jurisdiction of the state, A brings his action in a court which has no jurisdiction to give a judgment for more than \$500. At the trial A's damages are assessed at \$1,000. Judgment is given for A for \$500. A cannot maintain an action against B to recover further damages.

14. In an automobile collision, A is injured and his car damages as a result of the negligence of B. Instead of suing in a court of general jurisdiction of the state, **A brings his action for the damage to his car in a justice's court, which has jurisdiction in actions for damage to property but has no jurisdiction in actions for injury to the person. Judgment is rendered for A for the damage to the car. A cannot thereafter maintain an action against B to recover for the injury to his person arising out of the same collision. (Emphasis added.)**

Dennis cannot split his cause of action for the accident of October 6, 2000. When he brought his lawsuit for property damage in Small Claims Court he was obligated to at the same time bring an action for personal injuries even if it meant that he had to sue in a different court, such as the Third District Court, in order to obtain complete relief. At the time of the filing of the lawsuit in Small Claims Court Dennis had already incurred personal injuries and all of the medical expenses that are now being claimed in this lawsuit. (R. 66; Addendum E.) The medical log showing all the medical expenses predating the small claims action was produced by Dennis in his initial disclosures in this case. (R. 46.)

The Supreme Court of Utah has prohibited splitting causes of actions. In Raymer v. Hi-Line Transport, Inc., 15 Utah 2d 427, 394 P.2d 383 (Utah 1964), the court denied a Dennis' attempt to institute two actions in two separate proceedings – one for his property damage and one for his personal injuries. The court stated:

In a substantial majority of jurisdictions, a single act causing simultaneous injury to the physical person and property of one individual is held to give rise to only one cause of action, and not to separate causes based, on the one hand, on the personal injury, and on the other the property loss.

Id.

The court emphasized that the rule against splitting causes of action benefits both appellants (freeing them of delay and burdensome expense) and appellees (relieving them of the injustice of being subjected to more than one suit for a single tort). Id. The court also found the rule to be in harmony with public policy because it promoted judicial economy by eliminating the possibility of a multiplicity of suits.

Likewise, in Seale v. Gowans, et al., 923 P.2d 1361 (Utah 1996), the court stated that, “once injury results there is but a single tort and not a series of separate torts, one for each resultant harm . . . [A] plaintiff may not split this cause of action by seeking damages for some of his injuries in one suit and for later-developing injuries in another.”

In the majority of jurisdictions the law will not allow splitting a cause of action into a separate property damage and personal injury claim.²

In the case at hand, Dennis had the opportunity to bring his claim of bodily injury in the small claims action. His claims of property damage and bodily injury arose out of the same event, the October 6, 2000 automobile accident. He failed to assert his bodily injury claims at the same time he sued for property damage, and is now be precluded from bringing Vasquez into a second forum to litigate those claims.

² Kirchner v. Riherd, 702 S.W.2d 33 (Ky. 1985) (where an appellant sued for property damage and loss of use for his automobile in Small Claims Court and then attempted to bring his bodily injury claim in a higher court because the personal injury exceeded the small claims jurisdiction and notwithstanding that the trial court did not reach the question of liability for negligence the claim was barred by the previously filed action in Small Claims Court); Donahue v. American Family Mut. Cas. Co., 380 N.W.2d 437 (Iowa App. 1985) (where an insured had brought an earlier action against an insured in Small Claims Court and that action had been dismissed with a finding that the insured was not negligent; both actions arose out of the same automobile collision and out of the insurer's resulting duties under the insurance policy, the subsequent action was barred); Landry v. Lucher, 976 P.2d 1274 (Wash. App. 1999) (where the court precluding splitting a cause of action where the plaintiff brought a small claims action for property damage related claims and later attempted similar claims and medical expense claims in a court of higher jurisdiction); Pretz v. Lamont, 626 P.2d 806 (Kan. App. 1981), the appellate court affirmed dismissal of a subsequent action for injuries where appellant had already obtained a judgment for property damage; McKibben v. Zamora, 358 So.2d 866 (Fla. App. 1978), the appellate court disallows the splits of property damage action and personal injury action arising out of the same accident and specifically held that res judicata applies even if plaintiff had not met "threshold" for filing a personal injury claim at the time the property damage claim was filed.

C. The Small Claims Judgment Is Final And On The Merits

Under Madsen, supra., the third requirement for claim preclusion is that there be a final judgment on the merits in the prior action. Rule 54 of the Utah Rules of Civil Procedures defines judgment as “a decree and in the order from which an appeal lies.”

Under claim preclusion, there is no requirement that the common issue to both actions actually be litigated. Whether the judgment is by trial or from a motion to dismiss that is granted with prejudice, or by summary judgment, the resulting judgment would be on the merits. Conder v. Hunt, 1 P.3d 558 (Utah Ct. App. 2000).

In the instant case, a judgment was entered and an appeal was available to Dennis. The Small Claims Court entered judgment on the merits based on the finding of no cause of action.

II. EQUITY DOES NOT FAVOR ALLOWING THIS APPELLANT AN EXCEPTION TO THE CLAIMS PRECLUSION DOCTRINE.

Dennis argues that the Court, under equitable principles, should carve out an exception to the claims preclusion branch of res judicata for small claims actions.

Dennis’ argument is essentially based on a minority of jurisdictions that have provided such an exception. Dennis cites several cases including Isaac v. Truck Services, Inc., 253 Conn. 418 (Conn. 2000).

However, the facts of those cases and Isaac are substantially different from the present case. Isaac was decided on the basis that the plaintiff had not yet treated for personal injuries before her property damage claim was brought in Small Claims Court two weeks after the accident. Isaac, at 419. The court was basing its decision in Isaac on the fact that there was no injury claim yet to be asserted at the time the small claims action was filed.

Furthermore, in Isaac the court pointed to the fact that public policy in Connecticut had already provided for a limited exception to the claims preclusion doctrine “based on claims between married persons.” Isaac, at 420.

The present case is entirely different. In Utah the public policy is to not allow claims to be split nor to provide exceptions to the claims preclusion doctrine. See, Raymer, supra.; International, supra.

Furthermore, the facts in the present case strongly suggest Dennis should not be granted “equity” to carve out a limited exception.

Prior to filing the small claims action, Dennis had retained the very attorneys who represented him in the present case. (R.65; R. 66, p. 2, lines 20-25; p. 3, lines 1-8; p. 12, lines 10-25, p. 13, lines 1-25.) In fact, Dennis’ paralegal went with him to the small claims action as an interpreter. (R. 95, p. 13.) Dennis most certainly could have brought his lawsuit for injuries. A cause of action accrues at the time of the accident regardless of whether

plaintiff has sustained sufficient medical expenses to meet threshold. See Jepson v. State, 846 P.2d 485 (Ut. Ct. App. 1993). Furthermore, at the time of the filing of the small claims action Dennis had not only been treating but had finished treating. (R. 66; Addendum E.)

Prior to the small claims action, liability was in dispute between Dennis' attorneys and Vasquez. (R. 65; Addendum A.) Regardless of the dispute, Dennis received some \$4,650 for his property damage claims. (R. 30, 35, 79, 95 p. 12, lines 1-19.) This represents 80 percent of the property damage. (R. 95, p. 12, lines 1-19.) Dennis then attempted to sue for the remaining \$1,227.35 in Small Claims Court. However, at Small Claims Court a "no cause of action" judgment was entered against Dennis.

The significance of the above is clear. If Dennis had won the extra 20 percent liability he was seeking and a judgment had been entered on Dennis' behalf he would have been the one arguing and demanding from Vasquez 100 percent of the personal injury damages on the disputed liability. Instead, he lost at Small Claims Court and a final judgment was entered on the merits.

Dennis is not being punished because of the inequity of the court system. Dennis claim is being precluded by res judicata because he tried to misuse the system. He tried to use the small claims process in an attempt to later argue he should get 100 percent of his injury damages. Now that such tactic has backfired, Dennis requests equity. This is hardly

the set of facts the court in Isaac, supra., found so compelling. At the time Dennis filed in Small Claims Court there was absolutely no reason why he could not have brought his personal injury claim other than he was attempting to manipulate the system. Dennis has “unclean hands” in his request for equity.

In Donahue v. American Family Mut. Cas. Co., 380 N.W.2d 437 (Ct. App. Iowa 1985), the plaintiff brought two separate small claims actions based upon the same accident. The plaintiff was attempting to split his claims against different parties and lost both small claims actions for property damage related claims. The plaintiff did not appeal the small claims judgments. The plaintiff then filed a claim at the trial court level for property damage and medical expenses. The trial court granted summary judgment and the appeals court affirmed on the principle of claim preclusion.

In Donahue, supra., at 439, the court held:

We are not unmindful of the fact that plaintiff could not have brought an action for \$10,000 in Small Claims Court. But that does not negate the legal principles requiring a party to put in issue and try his entire claim at one time and not litigate separate claims in separate actions. This outcome demonstrates the harsh results of a misuse of the small claims process.

In Landry, supra., the appellate court did not allow the splitting of a cause of action into property and personal injury claims holding that the plaintiff’s small claims action bars

a subsequent lawsuit for personal injuries under res judicata. The court in Landry dismissed plaintiff's equity arguments:

The Landrys make several equitable arguments. Equitable remedies are not available unless the remedies at law are inadequate. Here the more-than-adequate legal remedy was to join the personal injury claim with the property damage claim in a court with the jurisdictional authority to preside over both matters up to the full amount of damages in controversy.

Landry, supra., at 785-86.

Lastly, Dennis never argued that an exception should be carved out of res judicata for small claims and never listed his out-of-state cases in his docketing statement. Dennis should not now be allowed for the first time to argue that an "equity" exception should be provided.

See Olson, supra.

CONCLUSION

Under Madsen, supra., Dennis essentially admits that under claim preclusion principles res judicata applies to bar Dennis' claims.

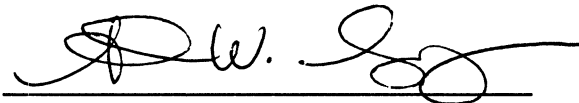
Dennis argues rather that under equity principles he should be allowed to split his cause of action. However, under the facts of this case, even if equity is considered, Dennis cannot prevail. Dennis attempted to misuse the small claims process to litigate a claim for property damages which he knew had already been settled. He wanted to adjudicate the

remaining 20 percent of fault to use as an argument in his personal injury claim. When he lost he did not appeal and the judgment became final. Dennis had legal representation the entire time. Dennis had not only received medical treatment but had completed medical treatment before filing in Small Claims Court. There is no reason given the facts in this case why Dennis could not have brought his injury and property damage claims in one action.

Therefore, it is respectfully submitted that Dennis' appeal be denied based on the claims preclusion doctrine of res judicata.

DATED this 16th day of December, 2002.

SMITH & GLAUSER, P.C.

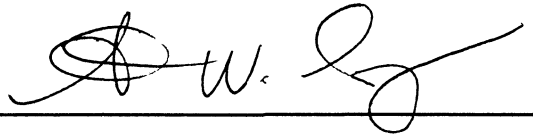
A handwritten signature in black ink, appearing to read 'R.K. Glauser', written over a horizontal line.

RICHARD K. GLAUSER
ALBERT W. GRAY
Attorneys for Vasquez

CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing Brief of Vasquez was mailed first class mail, postage prepaid, this 17th day of December, 2002, to the following:

Michael A. Katz, #3817
SIEGFRIED & JENSEN
5664 South Green Street
Murray, UT 84123



A handwritten signature in black ink, appearing to read "Michael A. Katz", is written over a horizontal line.

Tab A

LAW OFFICES OF
SIEGFRIED & JENSEN

5684 SOUTH GREEN STREET

MURRAY, UTAH 84123

TELEPHONE (801) 266-0999

FAX (801) 266-1338

PROVO OGDEN
375-0999 399-0999

November 7, 2000

NED P. SIEGFRIED
MITCHELL R. JENSEN*
PRESTON L. HANDY
MATTHEW J. STOREY
KENT M. BROWN**

OF COUNSEL
MICHAEL F. RICHMAN*
MICHAEL A. KATZ
A. JOHN WITKOWSKI*
BARBARA L. TOWNSEND*
BARRY K. MILLER

*ALSO ADMITTED IN CALIFORNIA
*ALSO ADMITTED IN COLORADO
**ALSO ADMITTED IN IDAHO

LEGAL ASSISTANTS
BRYANT E. HANSON
STEPHANIE MASH
BETTY M. CUMMOCK
TAMMARA SHEPARD
RUBEN MARTINEZ
TONI A. SINGLETARY
SANDY LEATHERBURY
KATHY DUGDALE
ANN LE
JILL HANSEN
CARLOS OJEDA
BETTY JEAN HUTKIN
CINDY DISRAELI
DEBRA FERDERBER
CHRIS OGURA

Julio Sandoval
STATE FARM INSURANCE
2655 S. Lake Erie Drive
Salt Lake City, Utah 84130

RE: Our Client: Ilia Dennis
Claim No: 44 3082553
DOL: October 6, 2000

Dear Julio

In response to your letter of November 2, 2000, I have enclosed for your review a copy of our liability review attached with photos of the scene of the accident.

Deputy Watkin's report expressed his opinion based on the scene observations and interviews with the two drivers and eyewitness. He indicates that Vasquez's failure to yield the right of way caused the collision.

Karl Hayes the eyewitness who was stopped behind your insured at the stop sign, is remarkable only for his observation that he thought Mr. Torrez was coming "a little fast" (SR-140 is posted for 45MPH). That is not evidence of speeding as you suggest.

It is clear that the proximate cause of the collision was the failure of your insured to see Mr. Torrez approaching and his failure to yield the right of way. Therefore, we request you review these items and make an accurate assessment of liability.

Sincerely,

SIEGFRIED & JENSEN


Mitchell R. Jensen

MRJ/jrm

RECEIVED
NOV 10 2000
West Valley Center, Utah

Tab B

82-553

HAND DELIVERED

RECEIVED BY

Third District Court, State of Utah

RECEIVED BY SALT LAKE COUNTY, MURRAY DEPARTMENT
5022 South State Street, Murray, Utah 84107

FM SERVICE CENTER MAR 13 2001

OREM SERVICE CENTER

Name LLIA FRANKS, Plaintiff)

Agent & Title _____)

Street Address 10254 S 200)

City, State, Zip Sandy, UT 84094 Phone 984-6909

vs.

Name David Xavier Vazquez, Defendant)

Social Security Number _____)

Agent & Title _____)

Street Address 991 W. 1000)

City, State, Zip Sandy, UT 84 Phone 374-9077

SMALL CLAIMS
AFFIDAVIT
AND ORDER

AFFIDAVIT

Plaintiff swears that the following is true:

(1) Defendant owes plaintiff \$ 6277.38 plus a filing fee and a service fee.

This debt arose on October 6, 2000, for:

damages to vehicle, rental car, and
cost of car to accident

(2) Plaintiff has asked defendant to pay the debt, but it has not been paid.

(3) Defendant resides OR the claim arose within the jurisdiction of this court.

Plaintiff

SUBSCRIBED and SWORN to before me on Feb 21, 2001.

*Clerk, Deputy or Notary

ORDER

THE STATE OF UTAH TO THE DEFENDANT:

You are directed to appear at a trial and answer the above claim on:

Date: March 29, 2001, Time 5:25 PM

Place: 5022 South State Street, Murray, Utah 84107 (west entrance)

Dated Feb 21, 2001.

Clerk or Deputy

Tab C

Third District Court, State of Utah
Salt Lake County, Murray Department
5022 South State Street, Murray, Utah 84107

Ilia Dennis, Plaintiff
Name _____
Agent & Title _____
Street address _____
City, State, Zip _____ Daytime Phone _____
David Xavier Vasquez, Defendant
Name _____
Social Security Number _____
Agent & Title _____
Street address _____
City, State, Zip _____ Daytime Phone _____

SMALL CLAIMS
JUDGMENT

Case No. 018200663

DATE OF TRIAL: 3- 3-29-01

PARTIES APPEARING: ☒ Plaintiff ☒ Defendant

THE COURT ORDERS JUDGMENT AS FOLLOWS:

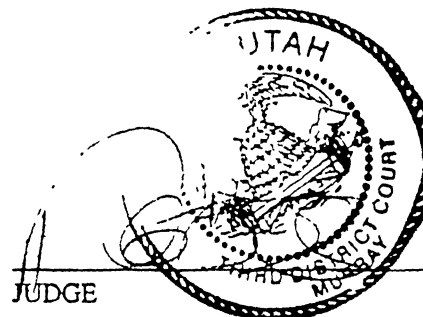
☒ FOR PLAINTIFF ☐ FOR DEFENDANT ON COUNTER AFFIDAVIT
\$ _____ Principal
\$ _____ Court Costs
\$ _____ Total Judgment, with interest at the current state post-judgment rate, until paid.

☒ FOR DEFENDANT ☐ FOR PLAINTIFF ON COUNTER AFFIDAVIT

- ☒ No Cause of Action
☐ Dismissal with Prejudice (claim may not be refiled)
☐ Dismissal without Prejudice (claim may be refiled)

This judgment is effective for 8 years.

dated 3/29 am, 2001



NOTICE OF JUDGMENT
(ORIGINAL TO BE FILED WITH COURT)

RECEIVED

this date I certify that I ☐ mailed ☒ delivered a copy of this Judgment to ☒ Plaintiff ☒ Defendant
dated 3/29, 2001 E. Moady
Signature of Person Giving Notice of Judgment

APR 03 2001
West Valley Service Center

Tab D

Richard K. Glauser, #4324
Albert W. Gray, #A6095
SMITH & GLAUSER, P.C.
2180 South 1300 East, Suite 600
Salt Lake City, UT 84106
Telephone: (609) 466-4228
Attorneys for Defendant

FILED DISTRICT COURT
Third Judicial District

MAY - 6 2002

By 
SALT LAKE COUNTY
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

ILIA DENNIS,)	
)	ORDER
Plaintiff,)	
v.)	
)	
DAVID VASQUEZ,)	Civil No. 010906455
)	
Defendant.)	Judge Glenn K. Iwasaki

The above-captioned case came before the Court pursuant to Defendant's motion for summary judgment on March 18, 2002. Albert W. Gray appeared on behalf of the moving party, the Defendant, David Vasquez, and Michael A. Katz appeared on behalf of the Plaintiff.

This matter arises out of an automobile accident occurring on October 6, 2000. On July 19, 2001, Plaintiff filed his complaint. Subsequently Defendant's insurer State Farm reached a settlement agreement with Plaintiff and paid him \$4,650.06. On February 23, 2001, Plaintiff filed a small claims action in the Third District Court in the amount of \$1,227.35 for property damage as a result of the accident. On March 23, 2001, the court in the small claims action entered judgment against Plaintiff stating that there was "no

Madsen v. Borthick , 769 P.2d 245 (Utah 1988), sets forth the requirements for claims preclusion under res judicata:

Claim preclusion bars a cause of action only if the suit in which that cause of action is being asserted and the prior suit satisfy three requirements. First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

Madsen v. Borthick, 769 P.2d 247, 247 (Utah 1988).

Applying the aforementioned to the facts of this case, it is undisputed the first requirement in Madsen is met. As for the second factor, the Restatement of Judgments § 24 provides:

The rule stated in this Section as to splitting a claim is applicable although the first action is brought in a court which has no jurisdiction to give a judgment for more than a designated amount. When the plaintiff brings an action in such a court and recovers judgment for the maximum amount which the court can award, he is precluded from thereafter maintaining an action for the balance of his claim ... it is assumed here that a court was available to the plaintiff in the same system of courts.

In the instant matter, while exceeding the jurisdiction of the small claims court, there is no dispute the personal injuries and expenses related thereto were already incurred and should have been brought together – even if they had to be filed in district court.

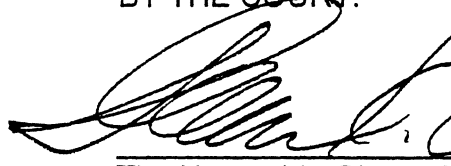
Furthermore, although the small claims court found there was “no cause of action,” plaintiff could not re-file his action and he failed to appeal. Consequently, this decision is one on the merits and not based solely on jurisdiction as argued by plaintiff.

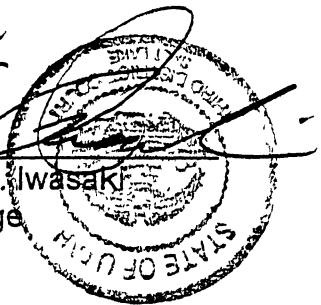
The Court, having considered the motion, memoranda, exhibits attached thereto, and for good cause shown and based upon the foregoing including the Court's Memorandum Decision of March 25, 2002, it is hereby ORDERED:

1. Defendant's motion for summary judgment is granted.

DATED this 6 day of MAY, 2002.

BY THE COURT:


The Honorable Glenn K. Iwasaki
Third District Court Judge



Tab E

Medlog

Client Name: Ilia Dennis Case#: 8220 DateLoss: 0 06 2000

Provider	rov Inv#	ServiceDate	Service	Amount
ALTA VIEW HOSPITAL		10/06/2000	EMERGENCY ROOM	\$1 189 79
DRAPER CITY AMBULANCE		10/06/2000	AMBULANCE	\$490 48
PRESCRIPTIONS		10/09/2000	HYDROCODONE	\$6 69
PRESCRIPTIONS		10/10/2000	ROXICET	\$13 59
NAVARRO BENNETT, MD		10/16/2000	OFFICE VISIT	\$165 00
PRESCRIPTIONS		10/16/2000	HYDROCODONE	\$11 69
CALANDRA JOSEPH C , PT		10/17/2000	PHYSICAL THERAPY	\$165 00
CALANDRA, JOSEPH C , PT		10/19/2000	PHYSICAL THERAPY	\$95 00
CALANDRA JOSEPH C , PT		10/23/2000	PHYSICAL THERAPY	\$20 00
CALANDRA, JOSEPH C , PT		10/23/2000	PHYSICAL THERAPY	\$130 00
GRANGE, TIMOTHY S , M D		10/23/2000	COMPREHENSIVE EXAM	\$425 00
HEALTHSOUTH		10/23/2000	MRI	\$547 00
CALANDRA, JOSEPH C , PT		10/25/2000	PHYSICAL THERAPY	\$130 00
CALANDRA, JOSEPH C , PT		10/27/2000	PHYSICAL THERAPY	\$130 00
NAVARRO, BENNETT, MD		10/30/2000	COMPREHENSIVE EXAM	\$350 00
CALANDRA, JOSEPH C , PT		11/06/2000	PHYSICAL THERAPY	\$130 00
CALANDRA, JOSEPH C , PT		11/08/2000	PHYSICAL THERAPY	\$130 00
CALANDRA, JOSEPH C , PT		11/15/2000	PHYSICAL THERAPY	\$115 00
CALANDRA, JOSEPH C , PT		11/17/2000	PHYSICAL THERAPY	\$110 00
CALANDRA, JOSEPH C , PT		11/20/2000	PHYSICAL THERAPY	\$165 00
GRANGE, TIMOTHY S , M D		11/27/2000	OFFICE VISIT	\$65 00
CALANDRA, JOSEPH C , PT		11/30/2000	PHYSICAL THERAPY	\$130 00
REGISTERED PHYSICAL THERAPISTS,		12/01/2000	PHYSICAL THERAPY	\$181 00
REGISTERED PHYSICAL THERAPISTS,		12/04/2000	PHYSICAL THERAPY	\$85 00
REGISTERED PHYSICAL THERAPISTS,		12/06/2000	PHYSICAL THERAPY	\$85 00
GRANGE, TIMOTHY S , M D		12/11/2000	OFFICE VISIT	\$65 00
PRESCRIPTIONS		12/11/2000	HYDROCODONE	\$6 99
REGISTERED PHYSICAL THERAPISTS,		12/13/2000	PHYSICAL THERAPY	\$83 00
PRESCRIPTIONS		12/14/2000	HYDROCONDONE	\$6 99
PRESCRIPTIONS		12/16/2000	IBUPROFEN	\$11 89
PRESCRIPTIONS		12/16/2000	HYDROCODONE	\$6 99
REGISTERED PHYSICAL THERAPISTS,		12/18/2000	PHYSICAL THERAPY	\$85 00
PRESCRIPTIONS		12/19/2000	NEURONTIN 600 MG	\$15 00
GRANGE, TIMOTHY S , M D		12/22/2000	COMPREHENSIVE EXAM	\$330 00

Medlog Total: \$5 684 10

07072