

2002

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

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

ILIA DENNIS,

Plaintiff/Appellant,

VS.

DAVID VASQUEZ,

Defendant/Appellee.

Appellate No. 20020415-CA

Trial Court No. 010906544 PI

BRIEF OF APPELLANT ILIA DENNIS  
REQUEST FOR ORAL ARGUMENT

APPEAL FROM A JUDGMENT ENTERED IN THE  
THIRD JUDICIAL DISTRICT COURT, SALT LAKE COUNTY,  
STATE OF UTAH, THE HONORABLE GLENN K. IWASAKI PRESIDING

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## LIST OF PARTIES

### Appellant

Plaintiff: Ilia Dennis

### Appellee

Defendant: David Vasquez

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## **JURISDICTION**

This court has jurisdiction to hear this appeal pursuant to Utah Code Annotated § 78-2a-3. This is an appeal from a final Order in the Third District Court of Salt Lake County, State of Utah.

## **STATEMENT OF ISSUES PRESENTED FOR REVIEW**

**DID THE TRIAL COURT COMMIT REVERSIBLE ERROR IN FINDING THAT RES JUDICATA PREVENTED APPELLANT FROM PURSUING A CLAIM FOR DAMAGES WITH REGARD TO PERSONAL INJURIES.**

## **STANDARD OF REVIEW**

Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ault v. Holden, 44 P.3d 781, 787 (Utah 2002). In reviewing an order granting summary judgment, this court reviews for correctness and accords no deference to the trial court's legal conclusions. Holmes Dev., LLC v. Cook, 48 P.3d 895, 902 (Utah 2002). Further, when determining whether summary judgment is appropriate, " 'we view the facts and all reasonable inferences drawn therefrom in the light most favorable to the nonmoving party.' " Ault, 44 P.3d at 787 (citing DCM Inv. Corp. v. Pinecrest Inv. Co., 34 P.3d 785, 787-88 (Utah 2001)).

## STATEMENT OF CASE

### Nature of the Case and Course of Proceedings

On July 19, 2001, Plaintiff/Appellant **Ilia Dennis** brought this action in the Third Judicial District Court to recover compensation for bodily injuries he sustained as a result of an automobile collision with Defendant/Appellee David Vasquez. Said automobile collision occurred on October 6, 2000 at the intersection of 14400 South and Pony Express Road in Salt Lake County, State of Utah. (Record on Appeal at 2.)

Prior to filing of this action, on February 23, 2001, Plaintiff, without the knowledge or advice of counsel, filed a small claims action (Case No. 018200663) seeking to collect \$1,227.35 for property damage to his vehicle and reimbursement of rental car expenses incurred as a result of the October 6 collision. (Record at 20.) At the small claims hearing on March 29, 2001, the Defendant argued the action should be dismissed because of a release purportedly signed by the Plaintiff for settlement of his property damage claim against the Defendant. Based upon this release, the small claims court entered judgment of “no cause of action.” (Record at 20.) Note: To date, Defendant has yet to produce any release between the Defendant and Plaintiff settling Plaintiff’s damages to Plaintiff’s vehicle.

In response to Plaintiff’s Complaint in this action, Defendant filed a Motion for Summary Judgment on the grounds that the claim for bodily injuries was barred under the doctrine of res judicata because of the March 29, 2001 small claims court decision. Plaintiff



argued in his reply that the claim should not be barred on the basis of res judicata because the elements of the defense were not met; the small claims court lacked the jurisdiction to hear the claim for bodily injuries; and that equities of this case supported a denial of Defendant's Motion. (Record at 42-46.) Specifically, Plaintiff challenged whether the small claims court action was a final ruling on the merits, that the issues in both cases were identical, and the authenticity of the purported release. On or about March 25, 2002, the Third Judicial District Court, adopting Defendant's arguments, issued a Memorandum Decision granting the Motion for Summary Judgment and dismissing the Plaintiff's claims on the basis that the claim was barred under the doctrine of res judicata. (Record at 74-77.)

### **Statement of Facts and Disposition**

1. On or about October 6, 2002, Appellant Dennis was involved in an automobile collision with Appellee Vasquez at the intersection of 14400 South and Pony Express Road in Salt Lake County, State of Utah. Appellee Vasquez, failed to yield the right-of-way when proceeding through a stop sign. As a result of the collision, Appellant sustained bodily injury. (Record at 2-3.)

2. Subsequent to the collision, Appellee's insurer, State Farm, issued a check to the Appellant in the amount of \$4,650.06 for the property damage caused by the collision.<sup>1</sup> (Record at 29.)

3. On February 23, 2001, Appellant, without the knowledge or advice of counsel, filed a small claims action against the Appellee seeking to recover \$1,227.35 for the portion of property damage remaining unpaid by State Farm, Defendant's insurer.<sup>2</sup> (Record at 30.)

4. On March 29, 2001, the small claims court, relying upon the Release purportedly signed by Appellant, issued a ruling of no cause of action for Appellee. (Record at 30.)

5. On July 19, 2001, Appellant, by and through counsel, filed a complaint in the Third Judicial District Court for Salt Lake County seeking damages for personal injuries sustained in the October 6, 2000, collision. No claim for property damages was made by the Appellant. (Record at 1-4.)

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<sup>1</sup> This amount reflects an apportionment of fault for the accident between Dennis and Vasquez. State Farm determined Vasquez was eighty percent (80%) at fault and Dennis the remaining twenty percent (20%). Furthermore, the Release forming the basis of the small claims court decision and included as Exhibit A to the Defendant's Motion for Summary Judgment does not even pertain to the settlement for property damages between Appellant and State Farm. The Release does not bear the signature of Appellant, is not for the amount of \$4,650.06, and was witnessed June 11, 2001, some three and one half months after the small claims hearing.

<sup>2</sup> Apparently, the Appellant felt that the property damage payment by State Farm apportioning twenty percent (20%) fault to him was unacceptable and challenged this in small claims court.

6. On December 12, 2001, Appellee filed a Motion for Summary Judgment arguing that Appellant's claim should be dismissed on the grounds of res judicata. Appellee argued the small claims court decision was a final adjudication on the merits of the claims between the Appellee and Appellant, that the parties were identical, and that the claim could have and should have been raised by the Appellant. (Record at 27.)

7. On December 24, 2001, Appellant filed his Memorandum in Opposition to Appellee's Motion. Appellant contended that the claim for personal injuries was not barred on the grounds of res judicata. Specifically, the issues were not identical, the small claims decision was not a final judgment on the merits, and that equity was best served by allowing the claim for personal injuries to proceed. (Record at 40-46.)

8. On March 22, 2002, a Memorandum Decision was issued by Judge Iwasaki granting the Appellee's Motion for Summary Judgment. (Record at 74-77 and as appended hereto as Addendum "A".)

9. An Order embodying the Decision was entered on May 6, 2002. On May 23, 2002, Appellant filed a timely Notice of Appeal in the Third Judicial District Court of Salt Lake County, State of Utah. (Record at 79-82 and 84-85 and as appended hereto as Addendum "B" and "C".)

### **RELIEF SOUGHT ON APPEAL**

Appellant seeks reversal of the trial court's ruling granting Appellee's Motion for Summary Judgment.

### **SUMMARY OF ARGUMENT**

The Trial Court erred in granting the Defendant/Appellee's Motion for Summary Judgment because all elements necessary for a finding of res judicata were not satisfied in the current action. Specifically, the Court erred in finding that Plaintiff/Appellant could have and should have raised his bodily injury claim in the small claims court proceeding, that the issues before the small claims court were identical, and that the decision of the small claims court was a final judgment on the merits of the claim. Finally, the Trial Court failed to consider the equities of this action which favor permitting Appellant to proceed on the substantive merits of the case.

### **ARGUMENT**

#### **POINT I**

#### **THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN FINDING THAT THE PLAINTIFF/APPELLANT'S CLAIM FOR BODILY INJURIES WAS BARRED UNDER THE DOCTRINE OF RES JUDICATA.**

As defined by the Utah Supreme Court, res judicata or claim preclusion has three elements; both suits must involve the same parties or their privies, the claim which is barred

must have been presented in the first suit or must have been one that could have or should have been presented in the first suit, and the first suit must have resulted in a judgment upon the merits. See Estate of Covington v. Josephson, 888 P.2d 675, 677 (Utah App. 1994) (citing Schaer v. State ex rel. UDOT, 657 P.2d 1337, 1340 (Utah 1983) and Madsen v. Borthick, 769 P.2d 245, 247 (Utah 1988)).

In the instant case, the District Court found that all three elements were met. However, it is the Appellant's position that, while the litigants in both cases were identical, the causes of action in both cases are not, that the Appellant's claim for personal injuries should and could not have been raised, that the judgment was not final and on the merits, and that the equities and policy implications behind this action support a reversal of the District Court's granting of Appellee/Defendant's Motion for Summary Judgment.

The first element of res judicata is that both suits involve the same parties or their privies. Estate of Covington, 888 P.2d at 677. Appellant does not dispute that this element is met in the current action. The parties here are the exact same as the parties in the small claims action. Clearly, the trial court decision on this point is not erroneous. However the defense of res judicata fails on all other prerequisites to application warranting a reversal and remand to the District Court for resolution on the substantive merits of Mr. Dennis' personal injury claim.

**A. THE BODILY INJURY ACTION AND THE PROPERTY  
DAMAGE/SMALL CLAIMS COURT ACTION DO NOT RAISE**

**IDENTICAL ISSUES NOR COULD THE FORMER HAVE BEEN  
ASSERTED IN THE SMALL CLAIMS COURT.**

The second element of claim preclusion requires that both suits involve the same issue or that the claim should have or could have been raised in the first suit. Id., 888 P.2d at 678. In this case, the Trial Court agreed with Appellee's argument that Mr. Dennis could have or should have raised or pursued his claim for personal injuries in the small claims action which sought recovery of damages for his vehicle. Appellee proposes that since both causes of action, that for property damages and the one for personal injuries, arose from the same automobile collision they therefore should have been raised together or addressed in one single suit.

It is true that a "cause of action" has been defined as "the aggregate of operative facts which give rise to a right enforceable in the court" and a "claim" as "situation or state of facts which entitles a party to sustain an action and gives him the right to seek judicial interference in his behalf." See American Estate Management Corp. v. International Investment and Development Corp., 986 P.2d 765, 767 (Utah App. 1999) (citations omitted). However, Utah courts have expressed a sincere willingness for flexibility in defining a claim, by stating that "[d]efining the scope of a claim or cause of action is not an exact science and, in fact, is at times driven by the relative importance of the finality of judgment." Id. Application of this proposition to the current action should lead to a decision that the Trial Court erred in granting the Motion for Summary Judgment.

Finality or not “getting two bites of the apple” is most assuredly a well-recognized and legitimate basis for applying res judicata to two actions which arise from the same operative facts. However, applying these principles to the decision of a small claims court (particularly where that decision did not go to the central issue of negligence but was instead based upon a release or accord and satisfaction) is very ill-advised. Small claims court proceedings are by their intent and purpose informal and expeditious.

“ . . . [t]here are no attorneys, no pleadings and no legal rules of evidence; there are no juries, and no formal findings are made on the issues presented. At the hearings, presentation of evidence may be sharply curtailed and the proceedings are often terminated in a short space of time. The awards—although made in accordance with the substantive law—are often based on the application of common case; and the spirit compromise and conciliation attends the proceedings.” Hindmarsh v. Mock, 2001 WL 521906, 4 (Idaho App. 2001). (citations omitted)

Simply put, a determination by a small claims court is not entitled to the same level of full faith credit. “We conclude that the policies behind small claims proceedings—under which procedural rights provided in the regular trial courts are sacrificed in favor of cheap and speedy resolution—strongly militate in favor of a rule against giving preclusive res judicata effect to an unappealed small claims judgment. . .” Id. at 5. The finality of a small claim court decision in regards to property damage should not be allowed to prevent an individual from pursuing redress of personal injuries suffered by the negligent acts of another.

Consistent with these principles, Appellant urges this Court to adopt some flexibility in its application of the “identical issue” element of res judicata to our facts. Specifically, Appellant asks the Court to find that the causes of action for property damage and personal

damages are not so intertwined or related so as to permit res judicata's prohibitions in this case.<sup>3</sup> To prevent Appellant's pursuit of compensation for personal injuries he suffered in favor of judicial economy or convenience would be a perversion of justice and the Utah judicial system. To define "claim" or "cause of action" in the narrow fashion urged by Appellee would result in placing judicial economy and convenience above an individual's right to recover personal damages suffered by the commission of a tort. And of course, interests of judicial economy are not near as paramount when one considers the fact the Court here involved was one limited to small claims matters. Given the rule expressed above, Appellant believes this case is one where flexibility precludes application of res judicata under the facts of this case.

Nor could this claim for personal injuries have been raised in the earlier small claims action. First, any decision by the Small Claims Court including the Appellant's personal injury damages would have been beyond its jurisdiction. Appellee is correct in stating that small claims courts do have jurisdiction over personal injury claims. Kawamoto v. Fratto, 994 P.2d 187 (Utah 2000). However, Appellee neglected to mention that these courts have a limited statutory cap of \$5,000 on damages they may award. Id., 994 P.2d at 191, citing Utah Code Ann. § 78-6-1(1) 1997. At the time of the small claims proceeding, Appellant's medical expenses alone surpassed \$5,000. Any proceeding seeking to collect on these

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<sup>3</sup>Also here contrary to the notion of "identical issues" is the fact that the Small Claims Court ruling did not reach the central question of the parties' respective comparative fault as it pertains to the automobile accident. The Small Claims Court instead found the property-damage claim to be barred by a release or earlier settlement and satisfaction of the property damages.



medical expenses, the disputed portion of property damages, and any general damages would greatly exceed the cap. Indeed, the District Court Complaint shows the amount in controversy in excess of \$20,000. Based upon this analysis, it is apparent that Appellant's personal injury damages could not or should not have been raised in the Small Claims Court proceeding. Had Appellant done so or been required to do so, he would be forced to accept an award wholly insufficient to compensate him for property damages and medical expenses alone, without even considering his general damages.

Furthermore, any adjudication of Appellant's medical expenses and personal injuries at the small claims trial would have been premature. While Appellant had temporarily ceased medical treatment, his claim for personal injuries was not ripe. At the time of the initial filing, only two months had passed from the date of Appellant's last medical treatment. He was not yet medically stable. Mr. Dennis was still not in a position to know the full extent of his losses. Other jurisdictions, relying in part upon unresolved medical injuries or continuing medical treatment, have declined to permit res judicata or claim preclusion to bar an action for personal damages following a small claims action for property damages. See Miller v. Trademark Builders, L.L.C., 2000 WL 1655276 (Conn. Super. 2000) (citing Isaac v. Truck Service, Inc., 253 Conn. 416, 752 A.2d 509 (Conn. 2000)).

Before applying a mechanical approach to this question, the Court should consider the precarious position with which a party injured in an automobile accident is confronted. If, as here, a tortfeasor's insurer disputes liability, a plaintiff may be unable to repair or

replace his damaged vehicle. He would be unable to maintain doctors visits or may have difficulty in continuing to work aggravating his medical condition and increasing, not mitigating, his financial losses. His only recourse is to seek the expeditious relief afforded through small claims court proceedings for recovery of the property damage aspects of the claim. As was the case with Mr. Dennis and the plaintiff in Isaac, any action on personal and bodily injuries must wait the passage of time, ongoing medical treatment and recovery or at a minimum, medical stability. Tort victims must have a means of ensuring transportation immediately after an accident destroying their vehicle. The proper and more equitable means of meeting these needs is to avoid res judicata in our circumstances.

**B. THE SMALL CLAIMS COURT ORDER WAS NOT A  
“JUDGMENT ON THE MERITS”.**

The final element of res judicata or claims preclusion requires that the first judgment result in a judgment on the merits of the claim. Appellant argues that even if the small claims action resulted in a judgment on the merits, that judgment was only effective as to the merits of the Appellant’s property damage claim. The Small Claims Affidavit completed by Appellant specifies that the action was limited to a claim for property damage. (Record at 38.) The decision of the Small Claims Court was limited to a claim for property damage; no discussion or decision regarding personal damages took place. Both parties knew the small claims proceeding was limited to the issue of property damage. Therefore, to say that the judgment reached by the Small Claims Court and relied upon by the District Court is a

final judgment on the merits of all the Appellant's claim is erroneous, especially if this Court adopts a flexible definition of claim or cause of action.

While not precisely a procedural-type defense, res judicata is nonetheless not a "judgment on the merits" in a tort case such as ours. The ruling of the lower court on the balance allegedly owed to compensate Plaintiff for his property damages was premised upon a release or settlement not a finding as to the relative fault or negligence of the parties. Appellant respectfully urges this Court to look beyond the mere face of the Small Claims Judgment to its substance. When one take this judicious and equitable approach, it is clear beyond reasonable dispute that this element of a res judicata defense fails and a reversal is warranted.

**C. EQUITIES PRESENT ON OUR FACTS RESTRICT APPLICATION  
OF A RES JUDICATA DEFENSE.**

Although a rigid approach suggest res judicata may apply, the equities and circumstances of this case require that the Trial Court's granting of Appellee's Motion for Summary Judgment be reversed. Reversal is warranted because, as other jurisdictions have recognized, the equities of the parties and the potential policy implications of the application of res judicata would lead to an unjust and unacceptable result. Moreover, the issue involved in this case is one of first impression of Utah and the application of res judicata could be applied prospectively; thus avoiding an unfair consequence in this case.

While it is occasionally recognized that claims for property damage and claims for personal injuries cannot be spilt, many jurisdictions find that such causes of action, if split, shall not be subject to attack on the grounds of res judicata. In Isaac v. Truck Service, Inc., the Supreme Court of Connecticut, on facts very similar to the instant case, refused to apply the doctrine of claim preclusion or res judicata. See Isaac, 253 Conn at 418, 752 A.2d at 511. In Isacc, the plaintiff filed a small claims action seeking to recover property damage sustained in automobile collision suffered five months earlier. This claim for property damages was granted two months later by the small claims court. Approximately one year later after her medical treatment was complete, the plaintiff filed suit against the same defendant seeking damages for personal injuries suffered in the same accident. Faced with these facts, the Connecticut Appellate Court declined to apply res judicata and bar plaintiff's personal injury claim, basing its decision on the fact the plaintiff had not yet sought medical care but also upon the basic premise that the **"social policy of providing a means of redress for personal injuries outweighs the need for finality of the small claims judgment."** Isaac v. Truck Service, Inc., 52 Conn. App. 545, 557, 727 A.2d 733, 755 (Conn. App. 1999) (emphasis added) .

The Connecticut Supreme Court, while disagreeing with the approach adopted by the Appellate Court, agreed the doctrine of claim preclusion did not apply to a claim for personal injuries filed in district court, where the parties litigated the question of property damage arising out of the same accident in small claims court. Isaac, 253 Conn. at 420, 752

A.2d at 512. Despite their recognition of the same rules cited by the Appellee/Defendant in this case, the Isaac Court determined that the mechanical application of the doctrine of claim preclusion should give way when it would frustrate other social values, such as redress of personal injuries, equally or more important than the convenience afforded by finality in legal controversies. Isaac, 253 Conn. at 422, 752 A.2d at 513. Furthermore, the Court, recognizing the nature of property damage claims, of personal injury claims, and of small claims courts, decided the negative policy implications created by allowing the doctrine of claim preclusion to bar the plaintiff's personal injury claim outweighed any gains to be had by allowing application of the doctrine.

This same result was reached in Hindmarsh v. Mock, *supra* which involved facts substantially similar to the present case and Isaac. Using much the same analysis as Isaac and as argued by Appellant here, the Idaho Court of Appeals rejected "the mechanical application of res judicata principles . . . , because such would work a significant injustice and frustrate social policies of greater importance than repose." Hindmarsh, 2001 WL 521906 at 5. Again, despite the rule regarding claim preclusion, the Hindmarsh Court ruled that the negative policy implications created by allowing res judicata to bar a suit for personal injuries where the parties were involved in an earlier small claims trial regarding property damages outweighed any gains flowing from a claim dismissal.

Lastly, as an alternative to the arguments delineated above, Appellant asks this Court to adopt the spirit of the decision in Peterson v. Temple, 918 P.2d 413 (Or. 1996). In

Peterson, the Oregon Supreme Court agreed to prospectively implement the application of doctrine of res judicata to cases factually similar to the present case. In Peterson, the Oregon Supreme Court, while adopting the rule urged by Appellee, declined to use res judicata to bar the case before it. The court recognized the plaintiff had spilt his property damage and personal injury causes of action in reliance upon earlier decisions permitting such action. Peterson, 918 P.2d at 413.

The precise issue presented by this case is one of first impression in Utah. While other Utah decisions have adopted the doctrine of claim preclusion and the one-action rule, the question of whether claims for property damages and personal damages resulting from a car accident can be split has never been addressed. Consequently, Appellant asks this Court, if it believes his claim is barred by res judicata, apply that holding prospectively such as was done in Peterson. By doing so, the inequities recognized in Isaac, Hindmarsh, and present in this case are avoided, yet the law regarding this particular issue and the applicability of res judicata to claims for property damages and personal injury damages is set for future guidance.

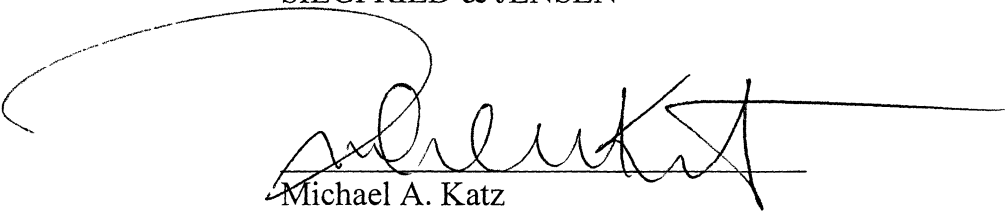
### **CONCLUSION**

This Court should reverse the Trial Court's erroneous ruling granting the Appellee's Motion for Summary Judgment, and remand for trial because:

Plaintiff/Appellant has demonstrated that the elements of res judicata have not been satisfied. The claims or cause of action in both suits are not identical nor is the claim of the present case, personal injury damages, one which could have or should have been raised in the first suit, and finally, it was the expectation and understanding of both parties and the court that any judgment would only be a ruling with regard to property damages. Additionally, Plaintiff/Appellant has shown, by way of persuasive precedence, that sufficient grounds exist allowing this Court to, based upon policy and equitable considerations, refuse application of the doctrine of res judicata to the instant case. Or in the alternative, Plaintiff/Appellant has shown sufficient grounds for this Court to limit a holding embracing the Trial Court's decision to prospective application and permit the present suit seeking compensation for personal injury damages to continue.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of October, 2002.

SIEGFRIED & JENSEN



Michael A. Katz  
Attorneys for Plaintiff/Appellant

Tab A



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

ILIA DENNIS,

Plaintiff,

vs.

DAVID VASQUEZ,

Defendant.

MEMORANDUM DECISION

Case No. 010906455

Honorable GLENN K. IWASAKI

Court Clerk: Janet Banks

March 22, 2002

The above-entitled case comes before the Court pursuant to Defendant's Motion for Summary Judgment. The Court heard oral argument with respect to the motion on March 18, 2002. Following the hearing, the matter was taken under advisement.

The Court having considered the motion, memoranda, exhibits attached thereto and for the good cause shown, hereby enters the following ruling.

This matter centers around an automobile accident occurring on October 6, 2000. On July 19, 2001, plaintiff filed this 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 damages and rental expenses as a result of the accident. On March 29, 2001, the court in the small claims action entered judgment against the plaintiff ruling

there was "no cause of action."<sup>1</sup>

With this motion, defendant argues summary judgment in his favor is appropriate based upon res judicata. Indeed, it is defendant's position plaintiff failed to assert his bodily injury claim in the small claims proceedings, and accordingly, is barred from pursuing this action. Specifically, argues defendant, all the elements necessary to invoke claim preclusion under res judicata have been fulfilled: (1) both cases involve the same parties; (2) plaintiff's bodily injury claim could and should have been raised in the small claims court proceeding; and (3) the small claims court proceeding resulted in a final judgment on the merits in favor of defendant.

Plaintiff opposes the motion arguing the decision of the small claims court was not on the merits, but rather, was based upon the Release-not upon a determination of fault. As to whether the issues are identical, plaintiff asserts the small claims action sought additional sums for property damage, while this Complaint is seeking personal injury damages. Finally, it is plaintiff's position dismissal would compel plaintiff to discharge medical bills attributable to the acts of defendant and such would be inequitable.

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<sup>1</sup>No record of the small claims proceeding is available and no competent affidavits were presented which indicate the events of the small claims proceeding.

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 245, 247 (Utah 1988).

Applying the aforementioned to the facts of this case, it is undisputed the first requirement of 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.

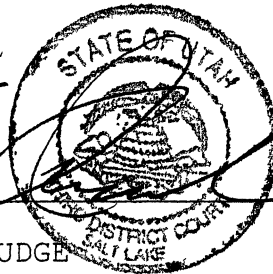
Furthermore, although the small claims court found there was "no cause of action," plaintiff could not re-file his action and he

failed to appeal. Consequently, this decision is one on the merits and not based solely on jurisdiction as argued by plaintiff.

Based upon the forgoing, Defendant's Motion for Summary Judgment is granted.

DATED this 25 day of March, 2002.

  
GLENN K. IWASAKI  
DISTRICT COURT JUDGE

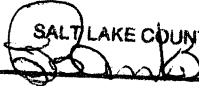


Tab B

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

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

---

ILIA DENNIS,

Plaintiff,

v.

DAVID VASQUEZ,

Defendant.

)  
) ORDER  
)  
)  
)  
) Civil No. 010906455  
)  
) Judge Glenn K. Iwasaki

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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

cause of action.” At the hearing on Defendant’s motion for summary judgment there was no record of the small claims proceeding available and no affidavits were presented which indicated the events of the small claims proceeding.

Defendant argued summary judgment in his favor was appropriate based upon res judicata. Defendant’s position was that Plaintiff failed to assert his bodily injury claim the small claims proceeding, and accordingly is barred from pursuing this action. Specifically Defendant argued that all the elements necessary to invoke claim preclusion under res judicata had been fulfilled:

1. Both cases involved the same parties;
2. Plaintiff’s bodily injury claim could and should have been raised in the small claims court proceeding; and
3. The small claims court proceeding resulted in a final judgment on the merits in favor of the Defendant.

Plaintiff opposed the motion for summary judgment arguing that the decision of the small claims court was not on the merits, but rather was based upon the release not upon determination of fault. As to whether the issues are identical, Plaintiff argued the small claims action sought additional sums for property damage, while this complaint is seeking personal injury damages. Finally, it was Plaintiff’s position that dismissal would compel Plaintiff to discharge medical bills attributable to the acts of the Defendant and such would be inequitable.

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.

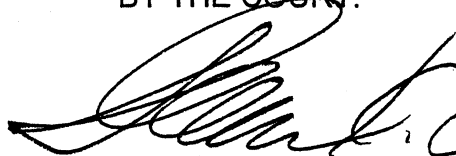


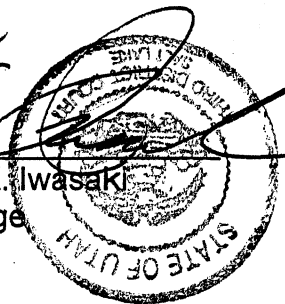
The Court, having considered the motion, memoranda, exhibits attached thereto, and for good cause shown and based upon the foregoing including the Court's Memorandum Decision of March 25, 2002, it is hereby ORDERED:

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 C

Michael A. Katz, #3817  
**MICHAEL F. RICHMAN & ASSOCIATES**  
Attorneys for Plaintiff  
5684 South Green Street  
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Facsimile: (801) 266-1387

THIRD JUDICIAL DISTRICT COURT  
02 MAY 24 PM 1:11  
THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY  
BY evangelb  
DEPUTY CLERK

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

---

**ILIA DENNIS,**

**Plaintiff and Appellant,**

vs.

**DAVID VASQUEZ,**

**Defendant and Appellee.**

)  
)  
) **NOTICE OF APPEAL**  
)  
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**Case No. 010906455 PI**

**Judge Glenn K. Iwasaki**

---

Notice is hereby given that plaintiff and appellant, Ilia Dennis, through counsel Michael A. Katz, appeals to the Supreme Court of Utah the final order of the Honorable Glenn K. Iwasaki entered in this matter on May 6, 2002. The appeal is taken from the entire judgment.

DATED this 21<sup>st</sup> day of May, 2002.

**MICHAEL F. RICHMAN & ASSOCIATES**

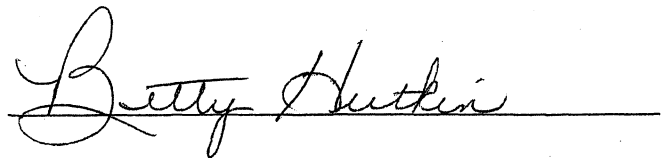


Michael A. Katz  
Attorneys for Plaintiff

**CERTIFICATE OF MAILING**

I hereby certify that on the 23<sup>rd</sup> day of May, 2002, I served Plaintiff and Appellant's NOTICE OF APPEAL upon counsel for the Defendant and Appellee in this matter, by mailing first class mail with sufficient postage prepaid to the following address:

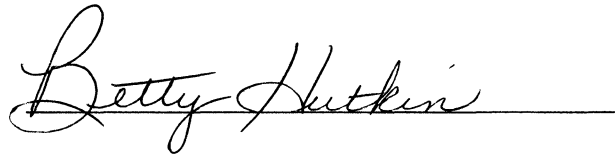
Richard K. Glauser  
Albert W. Gray  
SMITH & GLAUSER, P.C.  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 21st day of October, 2002, the foregoing **APPELLANT'S BRIEF** was mailed, postage fully prepaid, to:

Albert W. Gray  
SMITH & GLAUSER  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
Attorneys for David Vasquez

A handwritten signature in cursive script, reading "Betty Hutkin", is written over a horizontal line.