

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 95960-9

**SUPREME COURT
OF THE STATE OF WASHINGTON**

Appeal from Mason County Superior Court - No. 17-2-00632-1

THEODORE B. ENDENSTOM, et al.,

Appellant,

v.

THURSTON COUNTY RESOURCE STEWARDSHIP DEPARTMENT,
et. al.,

Respondents.

BRIEF OF RESPONDENT

JON TUNHEIM
PROSECUTING ATTORNEY

DONALD R. PETERS, JR., WSBA #23642
Senior Deputy Prosecuting Attorney
Civil Division – Building 5
2000 Lakeridge Dr SW
Olympia, WA 98502
Phone: (360) 786-5540
Fax: (360) 709-3006

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I. INTRODUCTION

Plaintiff seeks direct review of a decision from Mason County Superior Court denying their Quo Warranto action and dismissing same on the grounds of Res Judicata.

II. ISSUE PRESENTED FOR REVIEW

Did the Mason County Superior Court properly dismiss Plaintiff's Quo Warranto action on the grounds of Res Judicata?

III. STATEMENT OF THE CASE

Appellants sought judicial action in Thurston County Superior Court via a writ of quo warranto under the Revised Code of Washington 7.56 filed October 23, 2017 [CP 16-21, 154-158,164-169]. Respondent Thurston County responded to the quo warranto action in briefing filed April 13, 2018 [CP 94-149, 159-161]. Among other remedies, Thurston County asserted that the quo warranto action was barred by the doctrine of res judicata.

The underlying basis for Plaintiff's actions arose out of a November 26, 2013 "Notice of Violation" letter sent by Thurston County Resource Stewardship to Theodore Edenstrom [CP 70-71]. Since the issuance of that letter, Plaintiff had sought redress of these identical factual issues via a U.S. District Court Complaint [CP 101-106]. That Complaint resulted in an Order on Summary Judgment in favor of

Defendants [CP 108-122], and denial of Plaintiff's Motion for Reconsideration [CP 124-130]. Plaintiff appealed this Judgment to the Ninth Circuit, resulting in an affirmation of the District Court [CP 132-135].

At a hearing on April 30, 2018, the Mason County Superior Court Hon. Judge Monty Cobb granted dismissal of the Quo Warranto action as barred by the doctrine of res judicata [CP 170-172].

IV. ARGUMENT

A. Standard for Review of Summary Judgment

"An appellate court reviews summary judgments de novo." *State ex rel. Banks v. Drummond*, 187 Wn.2d 157, 167, 385 P.3d 769 (2016) citing *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 444, 334 P.3d 541 (2014). "Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Civil Rule 56. "The appellate court construes evidence and inferences from the evidence in favor of the nonmoving party." *State ex rel. Banks, Id.*, citing *Scrivener*, 181 Wn.2d at 444.

B. Res Judicata

"Res Judicata refers to the various ways in which a judgment in one action will have a binding effect in another." Fleming James, Jr. and Geoffrey C. Hazard, Jr. *Civil Procedure* sec. 11.3 at 590 (3d ed. 1985). As another commentator puts it, 'The law of res judicata...consists

entirely of an elaboration of the obvious principle that a controversy should be resolved once, not more than once.’
4 Kenneth C. Davis, *Administrative Law Treatise* sec. 21:9,
at 78 (2d ed. 1983).”

Hilltop Terrace Ass’n v. Island County, 126 Wn.2d 22, 891 P.2d 29, 30 (1995). Plaintiffs filed their Quo Warranto action in October 2017 while the matter was pending in the Ninth Circuit and after receiving adverse rulings from the U.S. District Court. The underlying basis in fact for both actions is the November 26, 2013 letter [CP 70-71] and the alleged damage arising therefrom.

“Resurrecting the same claim in a subsequent action is barred by res judicata” *Hilltop* at 31 citing Phillip A. Trautman, *Claim and Issue Preclusion in Civil Litigation in Washington*, 60 Wash. L. Rev. 805, 812 (1985).

“Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of (1) subject matter; (2) cause of action; (3) persons and parties; and (4) the quality of the persons for or against whom the claim is made.”

Hilltop, 126 Wn.2d at 31, 89 P.2d 29 (1995) quoting *Rains v. State*, 100 Wn.2d 660, 663, 674 P.2d 165 (1983). See also *DeTray v. City of Olympia*, 121 Wn. App. 777, 90 P.3d 1116 (2004).

The Court in *Hilltop* held that “subject matters are not identical [for purposes of res judicata] if they differ substantially.” *Hilltop*, 126

Wn.2d at 32. That is not the case here. Based upon the Writ for Quo Warranto/Writ of Prohibition sought in this case, it is uncontroverted that the subject matters are identical (the November 26, 2013 letter), satisfying Res Judicata condition (1), above.

It is also uncontroverted that the persons and parties are identical, satisfying condition (3). It cannot be contested that the quality of the persons for or against whom the claim is made are also identical, satisfying condition (4).

Plaintiffs may try and claim that the cause of action as required by condition (2) is somehow different in that the requested “Writ” is a different action seeking different remedies. Yet both matters seek to remedy the alleged injury caused by November 26, 2013 “Notice of Violation” letter. Both matters allege nearly identical allegations of harm perpetuated by the County and allege the identical injuries as a result of that action. The only differences between the U.S. District Court case and the action in Mason County Superior Court are the remedies sought which are a function of the jurisdiction of each action.

Plaintiffs did not prevail in U.S. District Court and their appeal to the Ninth Circuit was denied. Pursuant to the holding in *Hilltop* and the other cases and treatises cited above, the Mason County Superior Court correctly ruled that Plaintiffs’ action should be barred by the doctrine of

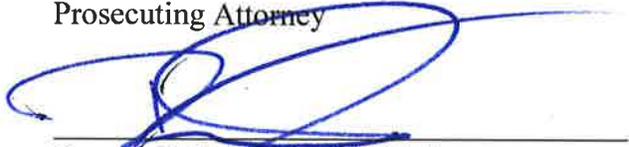
res judicata. The issues at hand have been resolved. Plaintiffs should not have the opportunity to argue them a second time.

V. CONCLUSION

As argued above, Plaintiff's appeal should be denied in total.

Respectfully submitted this 6th day of September 2018.

JON TUNHEIM
Prosecuting Attorney



Donald R. Peters, Jr. WSBA# 23642
Senior Deputy Prosecuting Attorney
Attorney for Thurston County Respondents

DECLARATION OF SERVICE

I hereby certify that the date indicated below I electronically filed the foregoing document with the Clerk of the Court using the Appellant's Court Portal utilized by the Washington State Supreme Court for Washington, which will provide service of this document to the attorneys of record.

n/a

I further certify that on the date listed below, I mailed, via U.S. Mail postage prepaid a copy of the foregoing to:

Plaintiffs Pro Se
Logan A. Edenstorm
Theodore B. Edenstrom
Dean G. Edenstrom
9733 Hunter Point Road N.W.
Olympia, WA 98502

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Olympia, Washington.

Date: September 6, 2018

Signature: /s/ Nancy Jones-Hegg

THURSTON COUNTY PROSECUTING ATTORNEY'S OFFICE

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Transmittal Information

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Brief Of Respondent

Sender Name: Nancy Jones-Hegg - Email: joneshn@co.thurston.wa.us

Filing on Behalf of: Donald R. PetersJr. - Email: petersr@co.thurston.wa.us (Alternate Email: PAOAppeals@co.thurston.wa.us)

Address:
2000 Lakedrige Dr SW
Olympia, WA, 98502
Phone: (360) 786-5540

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