Supreme Court No. _____
Court of Appeals, Division III, No. 400115

SUPREME COURT
OF THE STATE OF WASHINGTON

ANSON BARTRAND,

Respondent,

v.

PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY,

Petitioner.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER AND INTRODUCTION

Grant County Public Utility District No. 2 ("Grant PUD") petitions for review of the opinion and order of the Court of Appeals, Division Three, in *Anson Bartrand v. Public Utility District No. 2 of Grant County*, No. 40011-5-III. Grant PUD seeks review under RAP 13.4(b)(2) and (4).

This is a case where a litigant filed suit in small claims court seeking damages of $120, had judgment entered against him following a trial on the merits, and then filed another suit—an appeal in all but name—making the same allegations in superior court. The superior court dismissed the duplicative suit under *res judicata*. The Court of Appeals reversed. It held that while each of "the four requirements for *res judicata* are met," the litigant had been "denied the right to appeal" the small claims judgment—despite two statutes (RCW 12.36.010 and RCW 12.40.120) stating no such right exists. The Court of Appeals then held it would be an "injustice" to follow the statutory directive and so *res judicata* could not apply.

Review is appropriate under RAP 13.4(b)(2) and (4). The *Bartrand* opinion conflicts with *Landry v. Luscher*, 95 Wn. App. 779, 976 P.2d 1274 (1999) and *Speer v. Roney*, 52 Wn. App. 120, 758 P.2d 10 (1988), among others. RAP 13.4(b)(2).

More concerning, though, the *Bartrand* opinion eviscerates the legislative directive and express public policy behind small claims courts. It nullifies RCW 12.36.010 and RCW 12.40.120. It turns small claims court, for which "the sole object" is supposed to be "dispensing speedy and quick justice between the litigants," RCW 12.40.090, into a mock trial where the losing party can refile an identical suit in superior court—subjecting both parties to a do-over, but with the full expense and duration of superior court litigation. Whether the Court of Appeals can judicially negate the purpose and benefits of small claims court is an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b)(4).

II. COURT OF APPEALS DECISION

Grant PUD seeks review of the opinion issued by the Court of Appeals, Division Three, in *Anson Bartrand v. Public Utility District No. 2 of Grant County*, No. 40011-5-III, https://www.courts.wa.gov/opinions/pdf/400115_pub.pdf ("slip op." or "opinion") and the order denying reconsideration https://www.courts.wa.gov/opinions/pdf/400115_ord.pdf ("order"). *See* Appendix, Exhibits A and B.

III. ISSUES PRESENTED FOR REVIEW

(1) Did the Court of Appeals err in creating a new procedure that allows a small claims litigant to appeal a small claims judgment by refiling and relitigating the suit in superior court? **Yes.**

(2) Did the Court of Appeals err in holding the Legislature's bar on appealing from small claims court creates an "injustice" on the party who selected small claims court as their chosen venue? **Yes.**

(3) Did the Court of Appeals err in applying an element of collateral estoppel to prevent the application of *res judicata* where caselaw holds such equitable relief is not available when a small claims litigant could have filed in superior court? **Yes.**

IV. STATEMENT OF THE CASE

A. Mr. Bartrand's Successive Lawsuits

1. First lawsuit: 2021, Small Claims Court

On December 2, 2021, Anson Bartrand filed a lawsuit against Grant PUD on behalf of Mr. Bartrand's company, Sentinel Shores LLC. Clerk's Papers ("CP") 48-49. Mr. Bartrand filed this first lawsuit in the Small Claims Division of Grant County District Court. *Id.*

In his 2021 lawsuit, Mr. Bartrand claimed his company was an assignee of a "1962 Pole and Wire Agreement," entered into between "Chicago, Milwaukee, St. Paul and Pacific Railroad Company … and Public Utility District No. 2 of Grant County." *Id.* He claimed Grant PUD had breached that

agreement. *Id.* Mr. Bartrand claimed Grant PUD owed $120 in rent for the alleged breach. *Id.*

A small claims bench trial was held on Mr. Bartrand's claim. CP 51-52. Mr. Bartrand and Grant PUD presented testimonial and documentary evidence. *Id.* On January 12, 2022, the court entered judgment in favor of Grant PUD. *Id*. The judgment became final. *Id.*; *Bartrand*, slip op. at 2 ("Because the amount Sentinel sought was $120, i.e., not in excess of $250, Sentinel was statutorily precluded from appealing the judgment. *See* RCW 12.36.010; RCW 12.40.120.").

2. Second lawsuit: 2022, Superior Court

That summer, on July 5, 2022, Mr. Bartrand filed another lawsuit on behalf of Sentinel Shores against Grant PUD. CP 55. He filed the second lawsuit in Grant County Superior Court. *Id.* It was premised on the same alleged breach of the "1962 Pole and Wire Agreement." CP 57-60 (¶¶ 4.1-4.28). The superior court dismissed the second lawsuit on grounds of

ineffective service of process and improper non-attorney signature. CP 88-94 (motion), 97 (order). No appeal was taken.

3. Third lawsuit: 2023, Superior Court

The following summer, on July 24, 2023, Mr. Bartrand filed a third lawsuit against Grant PUD. This lawsuit was also filed in Grant County Superior Court and alleged breach of the "1962 Pole and Wire Agreement." CP 8-16.[1] Grant PUD moved to dismiss again; this time based solely on *res judicata*. CP 1-6. The superior court granted the motion. CP 111.

B. Mr. Bartrand's Appeal

Mr. Bartrand appealed. He contended there "was no final judgment on the merits" because "the Small Claims District Court lacked subject matter jurisdiction to award [Grant PUD] a prescriptive easement." Opening Br. at 4 (Assignments of

[1] The complaint in the 2023 lawsuit was identical to the complaint in the 2022 lawsuit in every way but two: paragraph 1.1 substituted Mr. Bartrand for Sentinel Shores, and paragraph 3.6 alleged Sentinel Shores quitclaimed the parcel to Mr. Bartrand. CP 8-16 (2023), 55-61 (2022).

Error), 5 (Argument). Mr. Bartrand argued, "Allowing the small claims court to unilaterally make decisions regarding real estate without the opportunity for appeal would violate the common law principles of fair play and justice." *Id.* at 6.

Grant PUD responded to the arguments presented by Mr. Bartrand. Grant PUD argued: (1) the elements of *res judicata* were met; (2) the small claims court's judgment was a final judgment; and (3) the small claims court had subject matter jurisdiction. Resp. Br. at 8-14, 15-17, 17-23.

In reply, Mr. Bartrand reiterated his two arguments. He argued only (1) the absence of a final judgment and (2) the lack of subject matter jurisdiction. Reply Br. at 3 ("*Res judicata* does not apply here, because the case has never been litigated to a final judgment on the merits," and "Without subject matter jurisdiction, *res judicata* does not apply.").

Contrary to the Court of Appeals' characterization, Mr. Bartrand did not argue that "applying res judicata to a judgment he was precluded by statute from appealing, works an

injustice." *Bartrand*, slip op. at 3. Indeed, Mr. Bartrand did not cite, at any point, the collateral estoppel case that Division Three determined was dispositive, *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 57 P.3d 300 (2002). The Court of Appeals considered Mr. Bartrand's appeal without oral argument and without supplemental briefing on the issue it decided controlled.

C. The Published Opinion, Denial of Reconsideration, and Order to Unpublish Opinion

On December 10, 2024, the Court of Appeals issued a five-page published opinion. *Bartrand*, slip op. at 1-5. The Court of Appeals viewed Mr. Bartrand's appeal as "argu[ing] … that applying res judicata to a judgment he was precluded by statute from appealing, works an injustice." *Id.*, slip op. at 3. To which, the court concluded, "here, even though the four requirements for res judicata are present, we will not apply res judicata if a party was statutorily denied the right to appeal…. RCW 12.40.120 denied him [Mr. Bartrand] the right to appeal." *Id.*, slip op. at 5.

Grant PUD moved for reconsideration. Without seeking a response or oral argument, the Court of Appeals denied reconsideration but ordered its opinion changed from "published" to "unpublished." *Bartrand*, order at 1-2.

V. ARGUMENT

A. The Opinion Conflicts with RCW 12.40.120 and RCW 12.36.010.

The Legislature intended to preclude relitigating low-dollar disputes decided in small claims court. RCW 12.40.120 and RCW 12.36.010. Yet the Court of Appeals' opinion provides Mr. Bartrand—and every other small claims litigant—the opportunity to relitigate an adverse small claims judgment simply by filing a duplicative lawsuit in superior court. *Bartrand*, slip op. at 4-5. The Court of Appeals' opinion holds that applying the small claims statutes, RCW 12.40.120 and RCW 12.36.010, "would work an injustice" on the same litigants who selected the small claims court venue in the first place. *Id.* The Court of Appeals so holds without analyzing whether those statutes are unconstitutional or against public

policy. *Id.* This remarkable judicial overreach presents an issue of substantial public interest and Court should accept review. RAP 13.4(b)(4).

1. The Opinion flouts the Legislature's plain intent barring parties from relitigating small claims judgments in superior court.

"The constitution grants sole authority in the Legislature to govern the jurisdiction and powers of inferior courts." *Wings of the World v. Small Claims*, 97 Wn. App. 803, 812, 987 P.2d 642 (1999) (internal quotations omitted). "The court's fundamental objective is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002).

Chapter 12.40 RCW provides the rules and authority for "Small Claims" generally, and Chapter 12.36 RCW specifically addresses "Small Claims Appeals." RCW 12.40.120 does not permit an appeal where the amount claimed is less than $250:

"***No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed was less than two hundred fifty dollars***." (emphasis added). RCW 12.36.010 similarly precludes appeals where the amount claimed is less than $250:

> Any person wishing to appeal a judgment or decision in a small claims action may, in person or by his or her agent, appeal to the superior court of the county where the judgment was rendered or decision made: PROVIDED, ***There shall be no appeal allowed unless the amount in controversy, exclusive of costs, exceeds two hundred fifty dollars***: PROVIDED FURTHER, That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW 46.63.090(5).

(emphasis added).

Here, Mr. Bartrand filed suit in small claims court and claimed $120—an amount "less than two hundred fifty dollars." RCW 12.40.120. Thus, Mr. Bartrand had no right to appeal the judgment entered by the small claims court—neither did Grant PUD. *Id.*; RCW 12.36.010.

Mr. Bartrand's 2023 lawsuit was effectively an appeal of his 2021 lawsuit. Mr. Bartrand's 2023 lawsuit was filed in superior court, just as an appeal from his small claims judgment would be. RALJ 1.1(b); CRLJ 72. And the superior court in the 2023 lawsuit would view the evidence and argument *de novo*, just like a superior court would on appeal from a limited jurisdiction court. CRLJ 72(b).

By permitting litigants (like Mr. Bartrand) to file a duplicative lawsuit that is an appeal in all but name, the Court of Appeals failed to "give effect to that plain meaning" of RCW 12.40.120 and RCW 12.36.010, and failed to "carry out the Legislature's intent." *Campbell & Gwinn*, 146 Wn.2d at 9-10; *Wings*, 97 Wn. App. at 812. Instead, the Court of Appeals created a new common law procedure for every litigant who receives an adverse ruling in a small claims case to refile the case in superior court and subject the other side to the expense of counsel, the discovery obligations, and the protracted trial schedule that comes with superior court litigation. This is

contrary to plain language of the small claims court statutes. The Court should accept review. RAP 13.4(b)(4).

2. The Opinion undermines the purpose and benefits of small claims court.

The Legislature explains its prohibition against relitigating small claims court cases: "The hearing and disposition of the actions shall be informal, with the sole object of dispensing speedy and quick justice between the litigants." RCW 12.40.090. Other divisions of the Court of Appeals have similarly recognized, "the legislature's intent, in creating the small claims department, was to provide a forum where litigants could obtain speedy, inexpensive and conclusive justice." *State ex rel. McCool v. Small Claims Court Dist. Court*, 12 Wn. App. 799, 800, 532 P.2d 1191 (1975). "***To accomplish that purpose the legislature limited the procedural rights afforded a party***." *Id.* (emphasis added); *accord Speer*, 52 Wn. App. at 122-23 (same).

Washington's policy against relitigating matters of small monetary value dates back to English common law. *Wings*, 97

Wn. App. at 807. "'The principle established by the English common law … was that small claims, as legislatively defined within limits reasonably related to the value of money and the cost of litigation in the contemporary economy, were to be resolved expeditiously, without a jury ***and without recourse to appeal***.'" *Id.* (quoting *Crouchman v. Super. Ct.*, 45 Cal. 3d 1167, 755 P.2d 1075, 248 Cal. Rptr. 626 (1988)) (emphasis added).

Nowhere in Chapters 12.40 or 12.36 RCW does the Legislature permit litigants who are statutorily precluded from appealing a small claims judgment, to instead file a new action on the same claim in superior court as an end-around the statutory bar. No other case in Washington makes such a pronouncement either. Doing so would contradict the statutory scheme and centuries-old public policy.

But that is what the Court of Appeals' opinion does here. *Bartrand* creates a common law mechanism for any litigant to appeal a small claims judgment by simply filing an identical

lawsuit in superior court. *Bartrand,* slip op. at 4-5. The Court should accept review and decide whether to uphold the public policy and statutory bar—or follow the Court of Appeals in eviscerating them. RAP 13.4(b)(4).

B. The Opinion Conflicts with Published Decisions from the Court of Appeals by Conflating Collateral Estoppel and *Res Judicata* Caselaw.

To hold collateral estoppel's "injustice" element must be applied to *res judicata,* the Court of Appeals relies on *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299. *Bartrand*, order at 1 and slip op. at 4-5. This holding misreads *Avery* and conflates the elements of collateral estoppel and *res judicata*. Moreover, the Court of Appeals does not address *Landry v. Luscher*, 95 Wn. App. 779, which addresses *res judicata* in the same context of small claims judgments and rejects the "equitable arguments" that the Court of Appeals nonetheless applied here. *Bartrand* is in conflict with published decisions of the Court of Appeals and creates an issue of

substantial public importance, thus warranting review under RAP 13.4(b)(2) and (4).

1. *Avery* concerns collateral estoppel, not *res judicata*.

To reach its conclusion, the Court of Appeals likened *res judicata* to its "sister doctrine, collateral estoppel," and applied an "injustice rubric" from a collateral estoppel case—*Avery*, 114 Wn. App. at 305—as a fifth, and dispositive element to *res judicata*. *Bartrand*, slip op. at 4-5. "But collateral estoppel and res judicata are not the same." *Pederson v. Potter*, 103 Wn. App. 62, 69, 11 P.3d 833 (2000).

Collateral estoppel includes, as one of its elements, whether its application works an injustice. *Pederson*, 103 Wn. App. at 69. This is in contrast to *res judicata*, which does not require an injustice inquiry. *Id.* ("Unlike res judicata, collateral estoppel requires the parties have a full and fair opportunity to present their case.").

Washington law is in accord with the principles stated in the Restatement on Judgments, which was cited by *Avery* and

by *Landry*. As to collateral estoppel, the Restatement notes, "relitigation of the issue in a subsequent action is not precluded in the following circumstances: (1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action." RESTATEMENT 2D OF JUDGMENTS § 28. Yet, as to *res judicata*, the Restatement notes no exception for a party unable to appeal a judgment. RESTATEMENT 2D OF JUDGMENTS § 20.

According to the Court of Appeals below, *Avery* stands for the proposition "that most jurisdictions follow the rule that a party will not be denied the right to relitigate a claim in an earlier trial it was barred by statute from appealing." *Bartrand*, order at 1. But *Avery* recognized this as true ***only*** in the context of collateral estoppel. 114 Wn. App. at 309. Indeed, the case cited by *Avery* for the proposition, "Most jurisdictions follow this rule," is *State Farm Fire & Cas. Co. v. Emde*, 706 S.W.2d 543, 546 (Mo. Ct. App. 1986)—a collateral estoppel case.

In *Emde*, the "rule" the Missouri court considered was "the affirmative defense of collateral estoppel under the theory that the small claims court judgment disposed of all issues in the controversy." 706 S.W.2d at 545-46. The Missouri court cited the "exception to the general rule of collateral estoppel when there are 'differences in the quality or extensiveness of the procedures followed in the two courts." *Id.* at 546 (citing [RESTATEMENT 2D OF JUDGMENTS] § 28(3)). As the *Emde* court emphasized, the Restatement only recognizes this exception as collateral estoppel. *Id.*; *also, supra* (comparing § 28 with § 20).

To be sure, "'res judicata … is not to be applied so rigidly as to defeat the ends of justice, or to work an injustice.'" *Weaver v. City of Everett*, 194 Wn.2d 464, 482, 450 P.3d 177 (2019) (quoting *Henderson v. Bardahl Int'l Corp.*, 72 Wn.2d 109, 119, 431 P.2d 961 (1967)). But this case presents the opposite problem presented in *Weaver*. In *Weaver*, the Court recognized "application of res judicata would work an injustice because it would contravene clear public policy memorialized

in the [Industrial Insurance] Act favoring relief from work-related illnesses and injuries for workers." *Id.*

Here, application of *res judicata* ***advances*** the clear public policy memorialized in the statutes creating small claims courts, RCW 12.40.090, and ***gives effect*** to the Legislature's prohibition on appealing small-dollar claims brought in small claims court, RCW 12.40.120 and RCW 12.36.010. In other words, the *res judicata* conclusion reached in *Weaver* was ***consistent with*** the operative statute, the operative caselaw, and the policy behind *res judicata*. 72 Wn.2d at 119. But the *res judicata* conclusion reached in the *Bartrand* opinion ***contradicts*** the operative statutes (RCW 12.40.120; RCW 12.36.010), ***contradicts*** the operative caselaw (*Landry*, 95 Wn. App. at 782 (discussed *infra*); *Speer*, 52 Wn. App. at 121-22 (discussed *infra*); *Wings*, 97 Wn. App. at 807 (quoted *supra*); *McCool*, 12 Wn. App. at 800 (quoted *supra*)), and ***contradicts*** the policy behind *res judicata* (*Pederson*, 103 Wn. App. at 69). The Court should accept review. RAP 13.4(b)(2) and (4).

2. The Opinion conflicts with *Landry v. Luscher*, 95 Wn. App. 779.

Landry v. Luscher applies the elements of a *res judicata* in a factually analogous case. 95 Wn. App. 779. It is directly on point and cited by the parties below, but omitted from the Court of Appeals' opinion.

In *Landry*, Mr. Landry filed suit against the Luschers in small claims court for property damage from a car accident. *Id.* at 781-82. Judgment was entered in the small claims action. *Id.* at 781. Mr. and Mrs. Landry then filed a lawsuit in superior court against the Luschers for personal injuries Mrs. Landry sustained in the accident. *Id.* The superior court ruled Mrs. Landry was party to the small claims action and dismissed the superior court action accordingly. *Id.* at 782. The Court of Appeals affirmed, holding *res judicata* barred the superior court action. *Id.* at 785.

In so holding, the *Landry* court considered—and rejected—the same "equitable arguments" that the Court of Appeals applied here *sub silentio*. *Compare Landry*, 95 Wn.

App. at 785-86 *with Bartrand*, slip op. at 4-5. The *Landry* court held, "***Equitable remedies are not available, [ ] unless the remedies at law are inadequate***." *Id.* at 785 (emphasis added). In *Landry*, "the more-than-adequate legal remedy was to join the personal injury damage 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." *Id.* at 785-86.

Likewise, here, "the more-than-adequate legal remedy was" for Mr. Bartrand to file his claim in superior court in the first place. *Id.* at 785-86. It was his choice to take advantage of the "speedy and quick justice" process of the small claims court. RCW 12.40.090. It was his choice to implicate RCW 12.40.120 and RCW 12.36.010. And it was his choice to bar any appeal either party might want to have taken. *E.g.*, *Speer*, 52 Wn. App. at 123 ("one who invokes the jurisdiction of the small claims court does not have a right of appeal from that

court. RCW 12.40.120. This prohibition applies to both the plaintiff and the defendant.").

Mr. Bartrand chose the "forum where litigants could obtain speedy, inexpensive and conclusive justice." *McCool*, 12 Wn. App. at 800.[2] It is not inequitable to hold him to the consequences of his decision. *Landry*, 95 Wn. App. at 785-86. The Court should accept review. RAP 13.4(b)(2) and (4).

C. The Opinion Conflicts with Court of Appeals Opinions, and with Small Claims Statutes, by Holding Small Claims Litigants Have "the Right to Appeal."

The opinion holds, "RCW 12.40.120 denied him [Mr. Bartrand] the right to appeal." *Bartrand*, slip op. at 5. But "civil litigants do not have a fundamental right of appeal." *Wings*, 97 Wn. App. at 810. "'The right of appeal in civil cases, then, if it exists, is one which is granted by the legislature.'" *Id.* (quoting *Hous. Auth. v. Saylors*, 87 Wn.2d

[2] Mr. Bartrand has no basis to argue he should have been advised of the rule against appealing. *Speer*, 52 Wn. App. at 123. ("We find no basis in the law to require the court to advise a litigant of this rule.").

732, 741, 557 P.2d 321 (1976)). Indeed, the other divisions of the Court of Appeals have upheld the Legislature's bar against relitigating small claims judgments, expressly because no right to appeal exists. *Wings*, 97 Wn. App. at 809-10; *Speer*, 52 Wn. App. at 121-22.

For example, in *Speer*, the defendant in a small claims action argued RCW 12.40.120 should not bar an appeal of his counterclaim because preventing him from seeking review violated his right to an appeal. *Id.* at 122. Division One rejected the argument: "The right of appeal is purely statutory in noncriminal actions.… ***The law is clear that one who invokes the jurisdiction of the small claims court does not have a right of appeal from that court***. RCW 12.40.120." *Id.* at 122-23 (emphasis added). "Accordingly," the court held, "because the statute proscribes a right of appeal where the court's jurisdiction is invoked, … he simply did not have a right to an appeal. ***He therefore has not been denied a right***." *Id.* at 123 (emphasis added).

The same law and reasoning should apply here. Mr. Bartrand "invoke[d] the jurisdiction of the small claims court" and so "does not have a right of appeal." *Id.* at 122-23. Mr. Bartrand "simply did not have a right to an appeal" and "[h]e therefore has not been denied a right." *Id.* at 123. But the *Bartrand* opinion comes to the exact opposite conclusion. The Court should accept review. RAP 13.4(b)(2).

VI. CONCLUSION

The Court of Appeals decision creates a common law procedure for small claims litigants to circumvent the statutory bar against appealing adverse small claims judgments. It flouts the codified and centuries-old public policy of having access to "speedy, inexpensive and conclusive justice" in small claims courts. And it conflicts with multiple published opinions from the Court of Appeals. Grant PUD respectfully requests the Court accept review under RAP 13.4(b)(2) and (4).

I certify that this document contains 3,965 words, in compliance with RAP 18.17.

Respectfully submitted this 21st day of February 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice. I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participant:

Appellant*:*
Anson Bartrand
P.O. Box A1
Beverly, WA 99321

DATED this 21st day of February 2025, at Spokane, Washington.

s/ *John D. Cadagan*
John D. Cadagan, WSBA #47996

INDEX TO APPENDIX

EXHIBIT A

FILED
DECEMBER 10, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANSON BARTRAND, Appellant, v. PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, Respondent.	)	No. 40011-5-III PUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Anson Bartrand appeals the superior court's summary dismissal of his complaint based on the doctrine of res judicata. We reverse and remand.

FACTS

In December 2021, Sentinel Shores, LLC, filed a claim against Public Utility District (PUD) No. 2 of Grant County in small claims court for breach of a 1962 written agreement. Sentinel claimed it was an assignee of the agreement, and that the PUD owed it $120 for six years back rent for the presence of its transmission and distribution lines on its property.

In January 2022, a small claims judgment was entered wherein the court explained: "Grant County PUD [has] a prescriptive easement in terms of the lines on property of Sentinel Shores, LLC. Rent is not due and owing per license agreement from 1962." Clerk's Papers (CP) at 51. Because the amount Sentinel sought was $120, i.e., not in excess of $250, Sentinel was statutorily precluded from appealing the judgment. *See* RCW 12.36.010; RCW 12.40.120.

In July 2023, Anson Bartrand filed a complaint against Grant County PUD in superior court. Bartrand is Sentinel's chief financial officer and an owner-member. Bartrand alleged that Sentinel had quitclaimed the property to him so that he now was the assignee of the 1962 agreement. In his claim for relief, Bartrand asked for a declaration of the parties' rights, for the PUD to acknowledge the agreement and rescind its claim to a prescriptive easement, and for payment of back rent. In response, the PUD filed a CR 12(b)(6) motion to dismiss, and a declaration with attachments in support of its motion.

In its motion, the PUD argued that Bartrand's complaint was barred because res judicata prevented the issues raised in the complaint from being litigated. Bartrand responded that res judicata did not apply because the small claims court lacked subject matter jurisdiction once the PUD raised its prescriptive easement defense. Bartrand additionally argued:

> Res judicata is a common law doctrine rooted in the spirit of fairness and justice. [It] is not to be applied rigidly as to defeat the ends of justice, or to work an injustice. Allowing the small claims court to unilaterally make decisions regarding real estate without [an] opportunity for appeal would violate the common law principles of fair play and justice. Small claims actions in which the matter sought by the claimant is under $250 may not be appealed.

CP at 109 (footnote omitted).

The superior court disagreed with Bartrand's arguments and dismissed his complaint.

Bartrand appeals.

ANALYSIS

Bartrand argues the trial court erred in dismissing his complaint based on res judicata. As he argued below, he again argues the small claims court lacked subject matter jurisdiction once the PUD raised its prescriptive easement defense, and that applying res judicata to a judgment he was precluded by statute from appealing, works an injustice. We agree with his second argument and decline to address his first.

Whether res judicata applies to preclude litigation of claims is a question of law that an appellate court reviews de novo. *Weaver v. City of Everett*, 194 Wn.2d 464, 473, 450 P.3d 177 (2019). Res judicata precludes litigation of an entire claim when a prior proceeding involving the same parties and issues culminated in a judgment on the merits and the claim either was litigated or could have been litigated in the prior proceeding. *Id.*

at 480. For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action in (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. *Id.* "Under the principles of res judicata, a judgment is binding upon parties to the litigation and persons in privity with those parties." *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 764, 887 P.2d 898 (1995). Here, Bartrand does not dispute any of the doctrine's four requirements. Rather, his argument focuses on equity.

"[R]es judicata remains an equitable, common law doctrine. Like its sister doctrine, collateral estoppel, 'res judicata . . . is not to be applied so rigidly as to defeat the ends of justice, or to work an injustice.'" *Weaver*, 194 Wn.2d at 482 (quoting *Henderson v. Bardahl Int'l Corp.*, 72 Wn.2d 109, 119, 431 P.2d 961 (1967)).

On a prior occasion, we had the opportunity to decide whether res judicata's sister doctrine, collateral estoppel, should be applied to bar relitigation of a claim decided in small claims court where the losing party was barred by statute from appealing.

In *State Farm Mutual Automobile Insurance Co. v. Avery*, 114 Wn. App. 299, 305, 57 P.3d 300 (2002), we noted that collateral estoppel would not be applied when it would work an injustice. Under the injustice rubric of our analysis, we wrote:

> No appeal of a small claims court judgment is allowed unless the amount in controversy, exclusive of costs, exceeds $250. RCW 12.40.120. The amount here was $158.07. State Farm had, therefore, no right to appeal.
>
> And for this reason alone, we deny preclusive effect to Mr. Avery's small claims judgment here. Even though [the three requirements for collateral estoppel are present], we will not deny a party the chance to [re]litigate the issue if it was statutorily denied an opportunity to appeal.

Id. at 309 (citation omitted).

Similarly, here, even though the four requirements for res judicata are present, we will not apply res judicata if a party was statutorily denied the right to appeal. Bartrand's claim in small claims court was for $120, exclusive of costs, so RCW 12.40.120 denied him the right to appeal. Application of res judicata under this circumstance would work an injustice.

We reverse the superior court's summary dismissal of Bartrand's complaint and remand for proceedings consistent with this opinion.

Lawrence-Berrey, C.J.

WE CONCUR:

Staab, J.

Cooney, J.

EXHIBIT B

FILED
January 23, 2025
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

ANSON BARTRAND,	)	**No. 40011-5-III**
	)	
Appellant,	)	
	)	**ORDER DENYING**
v.	)	**MOTION FOR**
	)	**RECONSIDERATION AND**
PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY,	)	**AMENDING OPINION**
	)	
Respondent.	)	

The court has considered respondent's motion for reconsideration of this court's opinion dated December 10, 2024, and is of the opinion the motion should be denied and the opinion modified.

Therefore, it is ORDERED that:

1. Respondent's motion for reconsideration is denied, this case being controlled by *State Farm Mutual Automobile Insurance Co. v. Avery*, 114 Wn. App. 299, 309, 57 P.3d 300 (2002) (noting that most jurisdictions follow the rule that a party will not be denied the right to relitigate a claim in an earlier trial it was barred by statute from appealing); and

2. Because it lacks precedential value, the opinion filed by the court on December 10, 2024 shall be modified on page 1 to designate it is an unpublished opinion, and on page 5 to add the following language:

> A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

PANEL: Judges Lawrence-Berrey, Staab, and Cooney

FOR THE COURT:

Lawrence-Berrey, C.J.

ROBERT LAWRENCE-BERREY
CHIEF JUDGE

FILED
DECEMBER 10, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANSON BARTRAND, Appellant, v. PUBLIC UTILITY DISTRICT NO. 2 OF GRANT COUNTY, Respondent.	)	No. 40011-5-III PUBLISHED OPINION

LAWRENCE-BERREY, C.J. — Anson Bartrand appeals the superior court's summary dismissal of his complaint based on the doctrine of res judicata. We reverse and remand.

FACTS

In December 2021, Sentinel Shores, LLC, filed a claim against Public Utility District (PUD) No. 2 of Grant County in small claims court for breach of a 1962 written agreement. Sentinel claimed it was an assignee of the agreement, and that the PUD owed it $120 for six years back rent for the presence of its transmission and distribution lines on its property.

In January 2022, a small claims judgment was entered wherein the court explained: "Grant County PUD [has] a prescriptive easement in terms of the lines on property of Sentinel Shores, LLC. Rent is not due and owing per license agreement from 1962." Clerk's Papers (CP) at 51. Because the amount Sentinel sought was $120, i.e., not in excess of $250, Sentinel was statutorily precluded from appealing the judgment. *See* RCW 12.36.010; RCW 12.40.120.

In July 2023, Anson Bartrand filed a complaint against Grant County PUD in superior court. Bartrand is Sentinel's chief financial officer and an owner-member. Bartrand alleged that Sentinel had quitclaimed the property to him so that he now was the assignee of the 1962 agreement. In his claim for relief, Bartrand asked for a declaration of the parties' rights, for the PUD to acknowledge the agreement and rescind its claim to a prescriptive easement, and for payment of back rent. In response, the PUD filed a CR 12(b)(6) motion to dismiss, and a declaration with attachments in support of its motion.

In its motion, the PUD argued that Bartrand's complaint was barred because res judicata prevented the issues raised in the complaint from being litigated. Bartrand responded that res judicata did not apply because the small claims court lacked subject matter jurisdiction once the PUD raised its prescriptive easement defense. Bartrand additionally argued:

> Res judicata is a common law doctrine rooted in the spirit of fairness and justice. [It] is not to be applied rigidly as to defeat the ends of justice, or to work an injustice. Allowing the small claims court to unilaterally make decisions regarding real estate without [an] opportunity for appeal would violate the common law principles of fair play and justice. Small claims actions in which the matter sought by the claimant is under $250 may not be appealed.

CP at 109 (footnote omitted).

The superior court disagreed with Bartrand's arguments and dismissed his complaint.

Bartrand appeals.

ANALYSIS

Bartrand argues the trial court erred in dismissing his complaint based on res judicata. As he argued below, he again argues the small claims court lacked subject matter jurisdiction once the PUD raised its prescriptive easement defense, and that applying res judicata to a judgment he was precluded by statute from appealing, works an injustice. We agree with his second argument and decline to address his first.

Whether res judicata applies to preclude litigation of claims is a question of law that an appellate court reviews de novo. *Weaver v. City of Everett*, 194 Wn.2d 464, 473, 450 P.3d 177 (2019). Res judicata precludes litigation of an entire claim when a prior proceeding involving the same parties and issues culminated in a judgment on the merits and the claim either was litigated or could have been litigated in the prior proceeding. *Id.*

at 480. For the doctrine to apply, a prior judgment must have a concurrence of identity with a subsequent action in (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. *Id.* "Under the principles of res judicata, a judgment is binding upon parties to the litigation and persons in privity with those parties." *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 764, 887 P.2d 898 (1995). Here, Bartrand does not dispute any of the doctrine's four requirements. Rather, his argument focuses on equity.

"[R]es judicata remains an equitable, common law doctrine. Like its sister doctrine, collateral estoppel, 'res judicata . . . is not to be applied so rigidly as to defeat the ends of justice, or to work an injustice.'" *Weaver*, 194 Wn.2d at 482 (quoting *Henderson v. Bardahl Int'l Corp.*, 72 Wn.2d 109, 119, 431 P.2d 961 (1967)).

On a prior occasion, we had the opportunity to decide whether res judicata's sister doctrine, collateral estoppel, should be applied to bar relitigation of a claim decided in small claims court where the losing party was barred by statute from appealing.

In *State Farm Mutual Automobile Insurance Co. v. Avery*, 114 Wn. App. 299, 305, 57 P.3d 300 (2002), we noted that collateral estoppel would not be applied when it would work an injustice. Under the injustice rubric of our analysis, we wrote:

> No appeal of a small claims court judgment is allowed unless the amount in controversy, exclusive of costs, exceeds $250. RCW 12.40.120. The amount here was $158.07. State Farm had, therefore, no right to appeal.
>
> And for this reason alone, we deny preclusive effect to Mr. Avery's small claims judgment here. Even though [the three requirements for collateral estoppel are present], we will not deny a party the chance to [re]litigate the issue if it was statutorily denied an opportunity to appeal.

Id. at 309 (citation omitted).

Similarly, here, even though the four requirements for res judicata are present, we will not apply res judicata if a party was statutorily denied the right to appeal. Bartrand's claim in small claims court was for $120, exclusive of costs, so RCW 12.40.120 denied him the right to appeal. Application of res judicata under this circumstance would work an injustice.

We reverse the superior court's summary dismissal of Bartrand's complaint and remand for proceedings consistent with this opinion.

Lawrence-Berrey, C.J.

WE CONCUR:

Staab, J.

Cooney, J.

EXHIBIT C

RCW 12.36.010

Appeal in small claims action authorized.

Any person wishing to appeal a judgment or decision in a small claims action may, in person or by his or her agent, appeal to the superior court of the county where the judgment was rendered or decision made: PROVIDED, There shall be no appeal allowed unless the amount in controversy, exclusive of costs, exceeds two hundred fifty dollars: PROVIDED FURTHER, That an appeal from the court's determination or order on a traffic infraction proceeding may be taken only in accordance with RCW **46.63.090**(5).

[**1997 c 352 s 7**; **1979 ex.s. c 136 s 21**; **1929 c 58 s 1**; RRS s 1910. Prior: **1905 c 20 s 1**; **1891 c 29 s 1**; Code 1881 s 1858; **1873 p 367 s 156**; **1854 p 252 s 160**.]

NOTES:

Effective date—Severability—1979 ex.s. c 136: See notes following RCW **46.63.010**.

APP. 16

EXHIBIT D

RCW 12.40.120

Appeals—Setting aside judgments.

No appeal shall be permitted from a judgment of the small claims department of the district court where the amount claimed was less than two hundred fifty dollars. No appeal shall be permitted by a party who requested the exercise of jurisdiction by the small claims department where the amount claimed by that party was less than one thousand dollars. A party in default may seek to have the default judgment set aside according to the civil court rules applicable to setting aside judgments in district court.

[**2019 c 251 s 6**; **1997 c 352 s 4**; **1988 c 85 s 2**; **1984 c 258 s 69**; **1970 ex.s. c 83 s 4**.]

NOTES:

Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258: See notes following RCW **3.30.010**.

GORDON TILDEN THOMAS CORDELL LLP

February 21, 2025 - 1:54 PM

Transmittal Information

Filed with Court:	Court of Appeals Division III
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Appellate Court Case Title:	Anson Bartrand v. Public Utility District No. 2 of Grant County
Superior Court Case Number:	23-2-00673-5

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