

[Cite as *Reynolds v. Orient Correction Inst.*, 2004-Ohio-3068.]

IN THE COURT OF CLAIMS OF OHIO

JERRY LEE REYNOLDS :  
Plaintiff :  
v. : CASE NO. 2003-12069-AD  
ORIENT CORRECTION INSTITUTION : MEMORANDUM DECISION  
Defendant :

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FINDINGS OF FACT

{¶1} 1) Plaintiff, Jerry Lee Reynolds, an inmate incarcerated at defendant, Orient Correctional Facility, asserted his personal property was lost or stolen on or about February 11, 2002, while under the control of defendant's staff.

{¶2} 2) Subsequently, plaintiff filed a claim in this court, 2002-03082-AD, seeking recovery of the replacement cost of the following items: two bowls, one blanket, three cassette tapes, five legal pads, a thesaurus, two can openers, a typewriter, and typewriter accessories. In the body of claim 2002-03082-AD, plaintiff mentioned his legal documents were also stolen. However, he did not make any claim for relief for the alleged stolen legal documents. Judgment was rendered in favor of plaintiff in the claim identified as 2002-03082-AD.

{¶3} 3) On December 11, 2003, plaintiff filed this complaint, 2003-12069-AD, seeking to recover \$1,500.00, the estimated replacement cost of the alleged stolen legal documents which plaintiff made reference to in the claim 2002-03082-AD. The issue of alleged stolen legal documents was not pursued by plaintiff in claim 2002-03082-AD nor was the issue addressed by the court in that claim.

{¶4} 4) On December 24, 2003, defendant filed the investigation report. Defendant has contended plaintiff's claim in this instant action is barred by the doctrine of res judicata. Defendant asserted plaintiff's cause of action is merged into the judgment in claim 2002-03082-AD. Defendant maintained plaintiff is precluded from any additional recovery based on the same cause of action advanced in claim 2002-03082-AD.

{¶5} 5) On December 29, 2003, plaintiff filed a motion to amend. Plaintiff seeks to include a claim for the replacement of his typewriter.

{¶6} 6) On January 20, 2004, plaintiff filed a motion for extension of time to submit a response to defendant's investigation report.

{¶7} 7) On January 30, 2004, plaintiff filed an instanter motion and a response to defendant's investigation report.

{¶8} 8) Plaintiff acknowledged in the response he chose to not pursue the issue of his alleged stolen legal documents in claim 2002-03082-AD. Despite this acknowledgment, plaintiff has insisted he should be permitted to have the claim regarding his alleged stolen legal documents decided on the merits.

#### CONCLUSIONS OF LAW

{¶9} 1) Civ.R. 15 in pertinent part states:

{¶10} "A party may amend his pleading once as a matter of course at any time before a responsive pleading is served . . . Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party."

{¶11} Plaintiff filed his motion after defendant had already filed the responsive pleading, investigation report; the matter raised in the motion to amend did not relate to the issue contained in the original complaint; and plaintiff has not received the written consent of the defendant. The interests of justice do not require plaintiff's motion to amend be granted.

{¶12} 2) "The doctrine of res judicata involves two basic concepts. *Norwood v. McDonald* (1943), 142 Ohio St. 299. First, it refers to the effect a judgment in a prior action has in a second action based on the same cause of action. The Restatement of the Law, Judgments, Section 45, uses the terms 'merger' and 'bar.' If the plaintiff in the

prior action is successful, the entire cause of action is 'merged' in the judgment. The merger means that a successful plaintiff cannot recover again on the same cause of action.

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{¶13} The second aspect of the res judicata doctrine is 'collateral estoppel.' While the merger and bar aspects of res judicata have the effect of precluding a plaintiff from relitigating the same cause of action against the same defendant, the collateral estoppel aspect precludes the relitigation, in a second action, of an issue that has been actually and necessarily litigated and determined in a prior action which was based on a different cause of action. Restatement of the Law, Judgments Section 45, comment (c) and Section 68(2); *Cromwell v. County of Sac* (1976), 94 U.S. 351, 24 L. Ed. 195. In short, under collateral estoppel, even where the cause of action is different in a subsequent suit, a judgment in a prior suit may nevertheless affect the outcome of a second suit." *Corradi v. Bear Creek Inns*. (May 14, 1998), Cuyahoga County App. No. 72915, 1998 Ohio App. LEXIS 2173, citing *Whitehead v. Gen. Tel-Co.* (1969), 20 Ohio 2d 108, 112.

{¶14}3) The doctrine of res judicata applies to matters actually litigated as well as those issues which might have been litigated incident to or in connection with the same subject matter. *Schram v. Cincinnati* (1922), 105 Ohio St. 324; *National Amusements, Inc. v. Springdale* (1990), 53 Ohio St. 3d 60; *DiPaolo v. DeVictor* (1988), 51 Ohio App. 3d 166. A party is bound then to present his entire cause against the opposing party and is foreclosed from later attempting to reopen the cause on issues which were or could have been presented. *Corrigan v. Downing* (1988), 55 Ohio App. 3d 125, 127. Plaintiff, in the instant claim, could have raised the issue of alleged stolen legal documents in the prior proceeding, 2002-03082-AD. However, since plaintiff did not raise issue when he should have any subsequent claim based on the cause action decided in claim 2002-03082-AD is barred by the doctrine of res judicata.

{¶15} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of defendant. Court costs are assessed against plaintiff. The clerk shall serve

upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

Jerry Lee Reynolds, #A283-281  
P.O. Box 209  
Orient, Ohio 43146-0209

Plaintiff, Pro se

Gregory C. Trout, Chief Counsel  
Department of Rehabilitation  
and Correction  
1050 Freeway Drive North  
Columbus, Ohio 43229

For Defendant

DRB/laa  
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