[Cite as *Leary v. Ohio Lottery Comm.*, 2024-Ohio-6122.]

IN THE COURT OF CLAIMS OF OHIO

REGINALD LEARY Plaintiff v. OHIO LOTTERY COMMISSION Defendant	Case No. 2023-00663JD Judge Lisa L. Sadler Magistrate Robert Van Schoyck ENTRY GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

{¶1} On August 26, 2024, Defendant, Ohio Lottery Commission, filed a Motion for Summary Judgment pursuant to Civ.R. 56(B), asserting that Plaintiff's claim is barred by the doctrine of res judicata. Pursuant to L.C.C.R. 4(D), Defendant's Motion for Summary Judgment is now fully briefed and is before the Court for a non-oral hearing. For the reasons stated below, the Court GRANTS Defendant's Motion for Summary Judgment.

Standard of Review

{¶2} Motions for summary judgment are reviewed under the standard set forth in Civ.R. 56(C), which states, in part:

> Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence, and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law. No evidence or stipulation may be considered except as stated in this rule.

"[T]he moving party bears the initial responsibility of informing the trial court of the basis for the motion, and identifying those portions of the record before the trial court which demonstrate the absence of a genuine issue of material fact on a material element of the nonmoving party's claim." *Dresher v. Burt*, 75 Ohio St.3d 280, 292 (1996).

{¶3} To meet this initial burden, the moving party must be able to point to evidentiary materials of the type listed in Civ.R. 56(C). *Id*. at 292-293. If the moving party meets its initial burden, the nonmoving party bears a reciprocal burden outlined in Civ.R. 56(E), which provides that "an adverse party may not rest upon the mere allegations or denials of the party's pleadings, but the party's response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial."

{¶4} When considering the evidence, "[a]ny doubt must be resolved in favor of the non-moving party." *Pingue v. Hyslop*, 2002-Ohio-2879, ¶ 15 (10th Dist.). It is well-established that granting summary judgment is not appropriate unless, construing the evidence most strongly in favor of the nonmoving party: (1) there is no genuine issue of material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) reasonable minds can come to but one conclusion, that conclusion being adverse to the nonmoving party. *Robinette v. Orthopedics, Inc.*, 1999 Ohio App. LEXIS 2038, *7 (10th Dist. May 4, 1999).

Statement of Facts

{¶5} Unless otherwise noted, the following facts are taken from the evidence submitted by Defendant in support of its motion, including the report of an administrative hearing held by Defendant and an affidavit authenticating the report (Exhibits A, F), the transcript of the administrative hearing (Exhibit B), the transcript of Plaintiff's deposition (Exhibit C), and the articles of incorporation for A & R Goals, LLC (Exhibit D). Plaintiff, while submitting copies of lottery tickets that are also appended to Defendant's Exhibit A, as well as a document titled "Terms and Conditions For Application For Ohio Lottery Retailer License", did not point to evidence that would place the following facts in dispute.

{¶6} In September 2021, Kenneth Rose purchased a Rolling Cash 5 lottery ticket from a Grab-N-Go convenience store in Fairfield, Ohio.[1] (Motion for Summary Judgment, Exhibit A, p. 3.) On September 29, 2021, Mr. Rose entered Jiffy 3, another convenience

[1] Although the Complaint states that Michael Grause purchased the ticket, he was instead the investigator tasked by Defendant to investigate Plaintiff. (Motion for Summary Judgment, Exhibit A, p. 3.)

store. *Id.* Jiffy 3 was owned and operated by A & R Goals, LLC (A & R). *Id.* at p. 2. A & R was incorporated by Amanda Redding and Plaintiff. (Motion for Summary Judgment, Exhibit D, p. 4.) While at Jiffy 3, Mr. Rose purchased additional scratch-off lottery tickets and checked his previously purchased Rolling Cash 5 ticket. (Motion for Summary Judgment, Exhibit A, p. 3.) Mr. Rose left Jiffy 3 without being issued the exchange ticket that was printed for his Rolling Cash 5 ticket.[2] *Id*. Mr. Rose later returned to Jiffy 3 seeking his exchange ticket, but was told the store did not have it. *Id.* Mr. Rose, having come to learn that his exchange ticket was a jackpot winner worth $110,000, contacted Defendant to report his ticket as stolen. *Id.*

{¶7} In response to Mr. Rose's report, Defendant tasked Michael Grause to investigate the incident. (Motion for Summary Judgment, Exhibit B, p. 9). Mr. Grause determined that Mr. Rose entered Jiffy 3 with a Rolling Cash 5 ticket, left without the exchange ticket, returned to obtain the exchange ticket, and was denied his ticket. *Id*. at pp. 9-10. Mr. Grause further determined that the exchange ticket was scanned on October 12, 2021, almost two weeks after its initial purchase and after Mr. Rose's attempts to retrieve it from Jiffy 3. *Id.* at pp. 12-13. As a result of the exchange ticket having been scanned, Mr. Grause issued a BOLO (be on the lookout) alert to local lottery offices for Mr. Rose's Rolling Cash 5 ticket. *Id.* at p. 14.

{¶8} Plaintiff admitted in his deposition that he was working at Jiffy 3 when Mr. Rose came back to Jiffy 3 looking for his exchange ticket, and that sometime after Mr. Rose left he retrieved Mr. Rose's exchange ticket from a box kept beneath the store register and signed it, as "it was in my best interest to get the ticket . . . ." (Motion for Summary Judgment, Exhibit C, pp. 8, 33.) On October 13, 2021, Plaintiff attempted to claim Mr. Rose's exchange ticket as his own at the Region 4 Cincinnati office but was denied. (Motion for Summary Judgment, Exhibit B, p. 15.) On his claim form when attempting to claim Mr. Rose's exchange ticket, Plaintiff responded "no" to the questions of whether he was "a Lottery Retailer" or "employed by a Lottery Retailer." (Motion for

[2] An exchange ticket is printed automatically when a Rolling Cash 5 ticket is checked. (Motion for Summary Judgment, Exhibit B, pp. 10-12.) Rolling Cash 5 tickets are viable for multiple lottery drawings with the exchange ticket functioning as the new ticket in subsequent drawings. (Motion for Summary Judgment, Exhibit B, p. 11.)

Summary Judgment, Exhibit A, p. 36.) Due to Plaintiff's responses on the claim form, Mr. Grause concluded that Plaintiff was attempting to conceal his connection to Jiffy 3. (Motion for Summary Judgment, Exhibit B, p. 20.) Mr. Grause recommended the revocation of Jiffy 3's lottery license and referred the case to local law enforcement for potential prosecution of Plaintiff and Ms. Redding for "attempted grand theft of the lottery ticket." (Motion for Summary Judgment, Exhibit A, p. 26.)

{¶9} On March 24, 2022, Defendant conducted a hearing pursuant to R.C. 119.09. *Id.* at p. 2. On April 22, 2022, the Hearing Examiner issued an order recommending that A & R, and by extension, Jiffy 3, be stripped of its lottery license. *Id.* at p. 5. It is undisputed that no appeal was taken from the order and that A & R's lottery license was revoked.

{¶10} On October 13, 2023, Plaintiff filed the present action in this Court, seeking the value of Mr. Rose's $110,000 winning Rolling Cash 5 ticket as Plaintiff signed and presented the winning exchange ticket and claims he is entitled to the winnings. (Complaint, ¶ 10-11).

LAW AND ANALYSIS

{¶11} In moving for summary judgment, Defendant argues that Plaintiff "is essentially challenging the outcome of a hearing by the OLC, but his claims are barred by the doctrine of res judicata . . . ." (Motion for Summary Judgment, p. 5.)

{¶12} "The doctrine of res judicata 'promotes principles of finality and judicial economy by preventing endless relitigation of an issue upon which there was already a full or fair opportunity to be heard.'" *Daniel v. Williams*, 2014-Ohio-273, ¶ 18 (10th Dist.), quoting *State v. Jama*, 2012-Ohio-2466, ¶ 45 (10th Dist.). Whether Plaintiff's claim is barred by the doctrine of res judicata is a question of law. *Id.* at ¶ 18.

{¶13} The doctrine of res judicata encompasses both claim preclusion and issue preclusion. *Id*. at ¶ 19. "Claim preclusion makes '"an existing final judgment or decree between the parties to litigation . . . conclusive as to all claims which were or might have been litigated in a first lawsuit."'" *Lycan v. Cleveland*, 2022-Ohio-4676, ¶ 22, quoting *Natl. Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62 (1990), quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69 (1986). "Issue preclusion, also known as collateral

estoppel, prevents parties from relitigating facts and issues in a subsequent suit that were fully litigated in a prior suit." *AJZ's Hauling, L.L.C. v. Trunorth Warranty Programs of N. America*, 2023-Ohio-3097, ¶ 16. "In *Thompson v. Wing*, 70 Ohio St.3d 176, 1994 Ohio 358, 637 N.E.2d 917 (1994), the Supreme Court of Ohio set forth three requirements for application of collateral estoppel or issue preclusion. 'Collateral estoppel applies when the fact or issue (1) was actually and directly litigated in the prior action, (2) was passed upon and determined by a court of competent jurisdiction, and (3) when the party against whom collateral estoppel is asserted was a party in privity with a party to the prior action.'" *Dehlendorf v. Ritchey*, 2012-Ohio-5193, ¶ 14 (10th Dist.).

{¶14} Regarding the first requirement for application of collateral estoppel, the administrative hearing before Defendant concerned Defendant's intention to revoke the lottery license of A & R under R.C. 3770.05(B) "based on a scheme to defraud the Lottery by stealing a customer's winning ticket and attempting to claim the prize." (Motion for Summary Judgment, Exhibit A, p. 3.) Among other things, it was determined from the administrative hearing that the winning ticket belonged to Mr. Rose and that Plaintiff "attempted to claim [Mr. Rose's] ticket as his own and failed to disclose both his ownership of the Lottery location and his employment there." *Id.* at pp. 3-4. It was further determined that Plaintiff "attempted to engage in grand theft by deception when trying to claim Mr. Rose's winning ticket." *Id.* at p. 4.

{¶15} Plaintiff's Complaint is predicated upon allegations that he simply "found" the winning Rolling Cash 5 ticket and that since he "signed the back of the lottery ticket, he should recover the 110,000 dollar prize . . . ." (Complaint, pp. 1-2.) Similarly, Plaintiff maintains in his response to the Motion for Summary Judgment that he "found the ticket", that "[a] review of the back of the winning ticket shows that it is signed by [Plaintiff]", and that he is therefore entitled to the prize. (Response, pp. 2, 4.) However, it was determined in the administrative hearing that Plaintiff improperly tried to claim the ticket and prize as his own, when in fact the prize-winning ticket belonged to Mr. Rose, thereby satisfying the first requirement for application of collateral estoppel as to these facts and issues.

{¶16} Regarding the second requirement for application of collateral estoppel, "'[r]es judicata, whether claim preclusion or issue preclusion, applies to quasi-judicial administrative proceedings.'" *State ex rel. Varnau v. Wenninger*, 2011-Ohio-759, ¶ 11,

quoting *State ex rel. Schachter v. Ohio Pub. Emps. Retirement Bd.*, 2009-Ohio-1704, ¶ 29. "An administrative proceeding is quasi-judicial for purposes of res judicata if '"the parties have had an ample opportunity to litigate the issues involved in the proceeding."'" *Irby v. Ohio Dept. of Rehab. & Corr.*, 2017-Ohio-2629, ¶ 14 (10th Dist.), quoting *Set Prods., Inc. v. Bainbridge Twp. Bd. of Zoning Appeals*, 31 Ohio St.3d 260, 263 (1987), quoting *Superior's Brand v. Lindley*, 62 Ohio St.2d 133 (1980); *see also Rath v. Ohio Bur. of Workers' Comp.*, 2015-Ohio-981, ¶ 36 (10th Dist.), quoting *Aspinwall v. Mentor Bd. of Tax Review*, 146 Ohio App.3d 466, 471 (11th Dist. 2001) ("The doctrine of res judicata is applicable to 'quasi-judicial decisions by administrative agencies from which no appeal is taken.'"). "'"Proceedings of administrative officers and agencies are not quasi-judicial where there is no requirement for notice, hearing and the opportunity for introduction of evidence."'" *Daniel*, 2014-Ohio-273, at ¶ 20, quoting *Greene v. Conrad*, 1997 Ohio App. LEXIS 3714, *8-9 (10th Dist. Aug. 21, 1997), quoting *M.J. Kelley Co. v. Cleveland*, 32 Ohio St.2d 150 (1972), paragraph two of the syllabus.

{¶17} In this case, there is no dispute that a Hearing Examiner appointed by Defendant conducted an evidentiary hearing under R.C. 119.09 to determine if A & R should be stripped of its lottery license. The Hearing Examiner found that "proper and effective" notice of the hearing was made. (Motion for Summary Judgment, Exhibit A, p. 2.) There is no dispute that the decision of the Hearing Examiner was not appealed, even though under R.C. 119.12 "[a]ny party adversely affected by any order of an agency issued pursuant to an adjudication may appeal from the order of the agency to the court of common pleas of the count designated in [R.C. 119.12(B)]." Accordingly, as a matter of law, the hearing was a quasi-judicial administrative proceeding to which collateral estoppel applies, thereby satisfying the second requirement for application of collateral estoppel.

{¶18} Finally, regarding the third requirement for application of collateral estoppel, "[t]he Ohio Supreme Court has recognized that '[w]hat constitutes privity in the context of res judicata is somewhat amorphous.'" *State ex rel. Davis v. Pub. Emps. Retirement Bd.*, 2007-Ohio-6594, ¶ 22, quoting *Brown v. Dayton*, 89 Ohio St.3d 245, 248 (2000). "'As a general matter, privity "is merely a word used to say that the relationship between the one who is a party on the record and another is close enough to include that other within the

res judicata."'" *Daniel* at ¶ 33, quoting *Thompson*, 70 Ohio St.3d at 184, quoting *Bruszewski v. United States*, 181 F.2d 419, 423 (3d Cir. 1950) (Goodrich, J., concurring).

{¶19} The uncontroverted evidence submitted by Defendant demonstrates that Plaintiff incorporated A & R with Ms. Redding and remained a co-owner at the time of the underlying events. In sworn testimony before the Hearing Examiner, Ms. Redding testified that she and Plaintiff co-owned A & R at the time of the underlying events, and the Hearing Examiner went on to find that Plaintiff was in fact an owner of A & R. (Motion for Summary Judgment, Exhibit B, p. 38; Exhibit A, p. 4.) Plaintiff does not point to any evidence contradicting the evidence Defendant submitted which shows that he was in privity with A & R. Reasonable minds can only conclude that Plaintiff was, in fact, in privity with A & R.

{¶20} Defendant thus met its burden of establishing the requirements for applying collateral estoppel. Plaintiff, in turn, did not respond with specific facts showing that there is a genuine issue for trial. Even when construing the evidence most strongly in Plaintiff's favor, reasonable minds can only conclude that the disposition of the winning ticket was litigated in the administrative proceeding and cannot be relitigated in this action.

Conclusion

{¶21} Based on the foregoing, the Court concludes that there are no genuine issues of material fact and that Defendant is entitled to judgment as a matter of law. Accordingly, Defendant's Motion for Summary Judgment is GRANTED and judgment is rendered in favor of Defendant. All previously scheduled events are VACATED. 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.

LISA L. SADLER
Judge

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Sent to S.C. Reporter 12/31/24