Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2018-173

OCTOBER TERM, 2018

Jeffrey Michael Brandt* v. Lisa Menard & Corrections Corporation of America	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit, Civil Division
	}	
	}	DOCKET NO. 720-12-17 Wncv
		Trial Judge: Mary Miles Teachout

In the above-entitled cause, the Clerk will enter:

Plaintiff appeals the dismissal, on grounds of claim preclusion, of his lawsuit seeking damages for the loss of property when he was an inmate at an out-of-state facility. We affirm.

At all relevant times, plaintiff was an inmate under the supervision of the Vermont Department of Corrections (DOC). In June 2016, he filed a complaint in small claims court against the DOC commissioner in her official capacity, alleging that: (1) in June 2015, when he was incarcerated at a private correctional facility in Kentucky, he packed up certain personal items that were to be mailed to a residence in Kentucky in anticipation of his transfer to another out-of-state prison facility in Michigan; and (2) after his arrival at the Michigan facility, he was denied communications with his partner, whose son was to receive the items, and thus he did not initially discover that Kentucky prison personnel had never sent the items to his designated address. He sought $1500 in compensatory damages for the loss of the items. Following a hearing in mid-September 2016, the small claims court entered judgment in favor of defendant. Plaintiff appealed to the civil division of the superior court, but subsequently voluntarily withdrew the appeal, which was then dismissed in November 2016.

Approximately thirteen months later, in December 2017, plaintiff filed a complaint in the civil division against the DOC commissioner and the private entity that owns and operates the Kentucky facility alleging essentially the same facts, albeit in more detail. Plaintiff asked the court to set the matter for a jury trial and sought reasonable and just compensation for defendants' negligence. Defendants moved to dismiss the complaint, arguing, in relevant part, that the action was barred by the doctrine of claim preclusion. Plaintiff opposed the motion, arguing that the small claims judgment was not conclusive for purposes of claim preclusion, citing Cold Springs Farm Development, Inc. v. Ball, 163 Vt. 466 (1995). The superior court granted defendants' motion to dismiss, ruling as follows: "Plaintiff failed to pursue a timely appeal of the Small Claims Judgment and thus any claim at this time is barred by the principle

of res judicata, meaning that the case has already been decided and is not subject to being reopened."

On appeal, plaintiff reiterates his argument that, pursuant to this Court's holding in Cold Springs, the small claims judgment against him did not preclude him from later filing a complaint in the civil division seeking damages for the loss of his property. He states that because of the lack of discovery available in small claims proceedings, he was hindered in his ability to marshal evidence and call witnesses, which resulted in his not learning until the final small claims hearing that his property had been returned to the correctional facility and not lost in shipment. We conclude that our holding in Cold Springs is not controlling in this case and that the superior court did not err in dismissing plaintiff's complaint based on the doctrine of claim preclusion.

In Cold Springs, the defendant sued the plaintiff in small claims court for return of his $1000 deposit after he declined to complete the purchase of a business due to concerns about the building's heating system. While the small claims proceeding was pending, the plaintiff filed a complaint in the superior court, seeking to recover damages resulting from the defendant's failure to complete the transaction. After the defendant's motion to consolidate the two actions was denied, the small claims court ruled that the plaintiff could retain the deposit. Relying on this decision, the plaintiff moved in the superior court action for partial summary judgment on the issue of liability. The superior court granted the motion, concluding that the doctrine of issue preclusion, which prevents a party from relitigating an issue that has necessarily been decided in a previous action between the same parties or those in privity, estopped the defendant from relitigating the issue in the superior court. On appeal, the defendant argued that the superior court erroneously precluded him from contesting liability in the superior court. We agreed, relying principally on the applicable Restatement section, which sets forth an exception for applying issue preclusion when there is a difference in the quality or extensiveness of the procedures in the two courts, such as when " 'the procedures available in the first court may have been tailored to the prompt, inexpensive determination of small claims and thus may be wholly inappropriate to the determination of the same issues when presented in the context of a much larger claim.' " Cold Springs, 163 Vt. at 470 (quoting Restatement (Second) of Judgments § 28 cmt. d (1982)).

In Cold Springs, we also rejected the defendant's other argument that the superior court should have dismissed the plaintiff's counterclaim for damages pursuant to the doctrine of claim preclusion, which bars relitigation of causes of action that were or could have been litigated in a previous action between the same parties or those in privity. Id. at 472-73. In rejecting that argument, we noted that the only damages litigated in the small claims action were the deposit, that there are no compulsory counterclaims in small claims court, and that the Legislature had specifically provided that a small claims judgment on an asserted counterclaim is not conclusive between the parties in a later action. Id.; see 12 V.S.A. § 5533(c).

Thus, Cold Springs is not controlling in this case, in which plaintiff filed essentially identical complaints first in small claims court, where he lost and then withdrew his appeal, and second in the civil division of the superior court. Under Vermont law, "claim preclusion will preclude a claim from being litigated if (1) a previous final judgment on the merits exists, (2) the case was between the same parties or parties in privity, and (3) the claim has been or could

have been fully litigated in the prior proceeding." Iannarone v. Limoggio, 2011 VT 91, ¶ 15, 190 Vt. 272 (quotation omitted). Plaintiff does not assert that any of the elements for applying claim preclusion are lacking here*; rather, he relies solely on Cold Springs for the proposition that claim preclusion is not appropriate when the first action is in the small claims court. As explained above, we reject plaintiff's reliance on Cold Springs, and we conclude that, under the circumstances of this case, the superior court did not err in dismissing plaintiff's complaint based on the doctrine of claim preclusion. Cf. TC Healthcare I, LLC v. Dupuis (In re Haven Eldercare, LLC), No. 3:11cv1090 (MRK), 2012 WL 90179, at *3-4 (D. Conn. Jan. 10, 2012) (discussing Cold Springs in applying claim preclusion, but not issue preclusion, to Vermont small claims judgment).

Nothing in the Restatement section concerning exceptions to claim preclusion, as opposed to issue preclusion, suggests that there is no preclusive effect when the first judgment was in a small claims proceeding. See generally Restatement (Second) of Judgments § 28 (setting forth various exceptions to application of claim preclusion). Other courts have recognized the distinction between the two doctrines with respect to small claims proceedings. For example, the Nebraska Supreme Court concluded that claim preclusion is applicable to small claims judgments because: (1) a small claims judgment is a judgment, and all judgments should have preclusive effect absent some persuasive reasons; (2) if preclusive effect were not given to small claims judgments, "the small claims court would be rendered meaningless, its judgments effectively neutered, because any dissatisfied party could simply file a new action on the same claim in county or district court," which would be antithetical to the purpose of small claims courts to provide prompt determinations in actions requiring minimal expenditure of funds; (3) litigants have a statutory opportunity to appeal from a small claims judgment, but if there were no preclusive effect of the small claims judgment, a losing litigant in a small claims judgment would never appeal and instead would file a new action wherein a new factual record could be created; and (4) it is fair to give preclusive effect to a small claims judgment when a party chooses to proceed there. Hara v. Reichert, 843 N.W.2d 812, 818-19 (Neb. 2014) (citing other courts that apply claim preclusion to small claims judgments, including those that do not apply issue preclusion to small claims judgments); see Allen v. Moyer, 2011 UT 44, ¶¶ 10-12, 15, 259 P.3d 1049 (concluding that notwithstanding statute allowing small claims litigants to assert compulsory counterclaims outside of small claims action, claim preclusion generally applies in small claims actions because doing so promotes finality and judicial economy by precluding relitigation of identical claims and preserves integrity of judicial system by preventing inconsistent judgments), overruled on other grounds by Madsen v. JPMorgan Chase Bank, 2012 UT 51, 296 P.3d 671 (per curiam); cf. Freels v. Koches, 94 N.E.3d 339, 343-44 (Ind. Ct. App. 2018) (citing small claims rule that claim preclusion is to be applied "only as to the amount involved in the particular action" and rejecting assertion that informality of small claims proceedings prohibits application of claim preclusion (quotation omitted)). But cf. Isaac v. Truck Serv., Inc., 752 A.2d 509, 512-16 (Conn. 2000) (recognizing authorities applying

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* As noted, in his later complaint filed with the civil division, plaintiff named not only the Vermont DOC commissioner but also the private entity that owned and operated the Kentucky prison facility. We have previously held, however, that the DOC commissioner was in privity with the same private prison entity—then named the Corrections Corporation of America and now named CoreCivic—for purposes of res judicata. Bain v. Hofmann, 2010 VT 18, ¶ 10, 187 Vt. 607 (mem.).

claim prelusion to small claims judgments, but making "limited exception" where parties have litigated property damages arising from automobile accident in small claims court and then seek to litigate personal injury damages in superior court outside small claims docket). Accordingly, we find no basis to disturb the superior court's order dismissing plaintiff's complaint on the grounds of claim preclusion.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Beth Robinson, Associate Justice