

STATE OF VERMONT

**SUPERIOR COURT
Washington Unit**

**CIVIL DIVISION
Docket No. 793-12-15 Wncv**

**JAMES T. BURKE
Plaintiff**

v.

**LISA MENARD, Commissioner,
Vermont Department of Corrections
Defendant**

**DECISION
The State’s Motion to Dismiss**

Plaintiff James Burke, an inmate in the custody of the Commissioner of the Department of Corrections, claims that the Department of Corrections has wrongfully charged his inmate account for the cost of making photocopies of his legal filings for a post-conviction review case pending in another court. His account is substantially overdrawn as a result. He does not seek damages in this case, but asks the court to declare that the DOC may not impose such charges on indigent prisoners and to order the DOC to remove those charges from his account. The State claims that Mr. Burke has litigated this claim two or three times previously and seeks dismissal on claim preclusion (*res judicata*) grounds.

“[T]he doctrine of *res judicata* serves to ‘protect the courts and the parties against the burden of relitigation, encourage reliance on judicial decisions, prevent vexatious litigation and decrease the chances of inconsistent adjudication.’ Under the doctrine, ‘a final judgment in previous litigation bars subsequent litigation if the parties, subject matter, and cause(s) of action in both matters are the same or substantially identical.’” *Bain v. Hofmann*, 2010 VT 18, ¶ 9, 187 Vt. 605 (citations omitted).

The State cites the following cases as evidence that Mr. Burke previously litigated the claim he raises in this case: *Burke v. VT DOC*, No. 367-6-14 Wnsc (Vt. Super. Ct.) (a small claims case in this court); *Burke v. Vt. Dep’t of Corrections*, No. 5:14-cv-00272 (D. Vt.) (the first federal case); and *Burke v. Menard*, No. 1:16-cv-52-jgm-jmc (D. Vt.) (the second federal case).

The small claims case addressed disputed photocopy charges from when Mr. Burke was held in a Kentucky facility. He lost that case, appealed, and then failed to pursue his appeal. *Burke v. VT DOC*, No. 367-6-14 Wnsc, Findings and Order (Vt. Super. Ct. Nov. 25, 2014) (granting small claims judgment for the State), No. 749-12-14 Wncv, Entry (Vt. Super. Ct. April 1, 2015) (dismissing appeal for failure to prosecute).

The first federal case also addressed disputed photocopy charges from when Mr. Burke

was in Kentucky. The court ruled that the claim presented was the same as the one Mr. Burke litigated in the small claims case and dismissed due to claim preclusion. *Burke v. Vt. Dep't of Corrections*, No. 5:14-cv-00272, Opinion and Order (D. Vt. April 29, 2015).

The second federal case cited by the State did not address photocopy charges; it addressed a claim about a practice of reviewing Mr. Burke's filings before copying them. *Burke v. Menard*, No. 1:16-cv-52-jgm-jmc, Magistrate's Report and Recommendation (D. Vt. June 1, 2016), Order (D. Vt. July 6, 2016) (adopting Magistrate's Report and Recommendation). Because this case did not address any claim about photocopy charges, it has no bearing here.

Because the first federal decision did not address the merits of the photocopy charge claim, but dismissed because the claim had been litigated in the small claims case, the question turns to whether the small claims litigation supports the State's claim preclusion argument.

The preclusion doctrines have limited application to small claims judgments. *See Cold Springs Farm Development, Inc. v. Ball*, 163 Vt. 466, 470–72 (1995). As explained in *Cold Springs Farm*, a small claims judgment finally resolves the specific damages claim advanced in the small claims case *only*. *Id.* at 472–73. It otherwise does not bar the relitigation of any issue determined in the course of arriving at that judgment in future litigation. *Id.* at 469–72. This is due largely to the informality of small claims. *Id.* As a leading treatise has noted in an analogous context, a small claims judgment will “preclude any further litigation on the actual claim presented but . . . [will not] preclude further litigation on any of the issues presented.” 18A Charles Wright, Arthur Miller, and Edward Cooper, *Fed. Prac. & Proc. Juris.* § 4443 (2d ed.) (citing *United States v. Int'l Bldg. Co.*, 345 U.S. 502 505–06 (1953)).

In this case, Mr. Burke is complaining about photocopy charges assessed while he was held in a Michigan facility. The small claims case addressed charges assessed by the Kentucky facility. There does not appear to be any cogent way in which the claim presented here is the same claim that was presented in the small claims case. Claim preclusion therefore does not apply.

The State emphasizes that claim preclusion bars claims that *should* have been brought in the earlier litigation as well as those that actually were brought. As explained above, however, small claims is different. Preclusion only bars small claims that actually were brought. In any event, the State does not explain how Mr. Burke could have brought a claim based on conduct occurring after he was transferred to Michigan in a case he filed while he still was in Kentucky.

ORDER

For the foregoing reasons, the State's motion to dismiss is denied.

Dated at Montpelier, Vermont this ____ day of March 2017.

Mary Miles Teachout
Superior Judge