

IN THE COURT OF APPEALS OF IOWA

No. 0-518 / 90-258

FILED

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CLERK SUPREME COURT

ROGER HARRIS,

Plaintiff-Appellant,

vs.

MARLOW JONES and PHYLLIS JONES,

Defendants-Appellees.

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Appeal from the Iowa District Court for Scott County,
Max R. Werling, Judge.

Plaintiff appeals a district court decision dismissing
his law action as barred by a previous small claims
decision dismissing his counterclaim. **AFFIRMED.**

Michael J. McCarthy of McCarthy & Lammers, Davenport,
for appellant.

John O. Moeller, Davenport, for appellees.

Considered by Donielson, P.J., and Schlegel and
Sackett, JJ.

SACKETT, J.

This case addresses the preclusive effect in district court of a judgment rendered in small claims court. We affirm the trial court's dismissal of this action.

Defendants-appellees Marlow and Phyllis Jones filed a small claims action against plaintiff-appellant Roger Harris for \$2,000 in damages resulting from defendant's alleged failure to complete repair work on an apartment building of the defendants. The day before trial, plaintiff filed a counterclaim against defendants for "\$2,000 for money owed on job."

Following trial, the magistrate denied defendants' claim and dismissed plaintiff's counterclaim because it was not timely filed. The magistrate stated he was not making a "finding as to whether the counterclaim was compulsory and whether such dismissal is with prejudice as the dismissal is not meant to be entered upon the merits of the counterclaim." No appeal was taken from the magistrate's decision.

Plaintiff filed the present law action in district court against the defendants for \$4,600 for the balance due him under the contract for repair of the apartment building. Defendants moved to dismiss contending the magistrate's dismissal of plaintiff's counterclaim precluded plaintiff from bringing this action. The trial court dismissed plaintiff's petition.

Plaintiff appeals. He contends the small claims ruling is not preclusive. Plaintiff first contends that issue preclusion does not apply. We agree. Issue preclusion does not bar relitigation on an issue litigated in small claims court. See Village Supply Co., Inc. v. Iowa Fund, Inc., 312 N.W.2d 551, 554 (Iowa 1981); see also State ex rel. Miller v. Hydro Mag., Ltd., 436 N.W.2d 617, 623 (Iowa 1989). While issue preclusion does not apply, claim preclusion may. A claim adjudicated in small claims court cannot be relitigated in district court. See Donohue v. American Farmers Mut. Cas. Co., 380 N.W.2d 437, 439 (Iowa App. 1985); see also Bagley v. Bagley, 465 N.W.2d 551, 554 (Iowa App. 1990).

Claim preclusion is based on the principle that a party should not be permitted to split or try a claim piecemeal, but must put in issue and try the entire claim or put forth the entire defense in the first action which proceeds to final judgment. Lowery Investments v. Stephens Industries, 395 N.W.2d 850, 852 (Iowa 1986). The adjudication in a former suit between the same parties is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claim at one time and not in separate actions. Tegges v. City of Ames, 356 N.W.2d 503, 508 (Iowa 1984); B&B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976).

Plaintiff contends claim preclusion does not apply because his counterclaim was not litigated, rather it was dismissed. Therefore, plaintiff argues the magistrate's decision was not a decision on the merits of his claim against defendants.

If both actions had been decided in district court, the counterclaim would have been a compulsory counterclaim under Iowa R. Civ. P. 29 which provides:

A pleading must contain a counterclaim for every cause of action then matured, and not the subject of a pending action, held by the pleader against any opposing party and arising out of the transaction or occurrence that is the basis of such opposing party's claim, unless its adjudication would require the presence of indispensable parties of whom jurisdiction cannot be acquired. A final judgment on the merits shall bar such a counterclaim, although not pleaded.

However, Iowa R. Civ. P. 29 does not apply to small claims actions under section 631.7(4) which provides:

The rules of civil procedure pertaining to actions, joinder of actions, parties and intervention shall apply to small claims actions, except that rule 29 shall not apply. No counterclaim is necessary to assert an offset arising out of the subject matter of the plaintiff's claim. A counterclaim, cross-petition, or intervention against an existing party is deemed denied and no responsive pleading by such party is required.

The question is therefore whether plaintiff's counterclaim to defendants' petition was litigated in the first action. While no judgment was entered for this plaintiff in the small claims action, he appeared and offered evidence on his claim. The finding of the magistrate addresses money owed by defendants to plaintiff.

The two claims are between the same parties and arise from the same transaction. The facts of both claims were before the magistrate. Plaintiff had the right to appeal the magistrate's ruling but failed to do so.

Plaintiff does not have the right to relitigate his claim. See Bagley, 465 N.W.2d at 554, Donohue, 380 N.W.2d at 439.

AFFIRMED.