IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DAVID W. CREVELING,		**No. 27790-9-III**
Appellant,	)	
v.	)	
CALVIN TRESER, CONNIE ITEN, SUSAN BURGDORFF-BEERY, JOHN DOE 1-200 (to be named as known), JANE DOE 1-200 (to be formally named as known), WASHINGTON STATE DEPARTMENT OF ECOLOGY, WASHINGTON STATE DEPARTMENT OF FISH AND WILDLIFE, JAY MANNING, Director KOENINGS, and WASHINGTON STATE,	)	**Division Three**
Respondents.	)	**UNPUBLISHED OPINION**

Sweeney, J. — David Creveling appeals the trial court's summary dismissal of his action for conversion and unconstitutional taking against the Washington Department of Ecology, the Washington Department of Fish and Wildlife, and several state employees and officials. Mr. Creveling's claims for conversion and Fifth Amendment taking had

already been dismissed on summary judgment in a previous federal district court action and are, thus, barred by the doctrine of res judicata. We, accordingly, affirm the trial court's grant of summary judgment.

FACTS

David Creveling sued the State of Washington in the United States District Court for conversion and Fifth Amendment taking. He argued that approximately 125 wild fish were unlawfully removed from an irrigation canal running through his property. Mr. Creveling offered the word of God in Genesis, English Common Law, the 1866 Mining Act, and his rights as a Native American in support of his ownership claim to the fish. He sought compensation in excess of $5 billion.

Mr. Creveling filed a nearly identical complaint in the Okanogan County Superior Court. He again offered the same arguments in support of his claim to the 125 wild fish removed from the irrigation canal. The court stayed the state action until the parallel federal action was concluded.

Both parties moved for summary judgment in the federal action. The State's motion addressed each of Mr. Creveling's arguments and contended that Mr. Creveling had no property interest in the fish that he claimed were converted or taken by the State. The federal court granted the State's motion and denied Mr. Creveling's motion for

summary judgment. It then entered an order dismissing Mr. Creveling's complaint.

Mr. Creveling appealed the decision and the Ninth Circuit Court of Appeals affirmed. *Creveling v. Treser*, 245 Fed. App'x 575 (9th Cir. 2007). Mr. Creveling petitioned the United States Supreme Court for a writ of certiorari which was denied on January 7, 2008. *Creveling v. Treser*, ___ U.S. ___, 128 S. Ct. 923, 169 L. Ed. 2d 765 (2008).

The State of Washington then moved for summary judgment in the Okanogan court action based on res judicata. The court agreed with the State and dismissed Mr. Creveling's action.

ANALYSIS

A. Summary Judgment

We review summary judgment rulings de novo. *Seybold v. Neu*, 105 Wn. App. 666, 675, 19 P.3d 1068 (2001). And whether res judicata bars an action is a question of law reviewed de novo. *Kuhlman v. Thomas*, 78 Wn. App. 115, 120, 897 P.2d 365 (1995).

Res judicata bars the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995). For res judicata to apply, a prior judgment must have the same

(1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the person for or against whom the claim is made. *Id.*

The State contends that any claims for conversion or unconstitutional taking were properly dismissed on summary judgment because the same parties litigated the same issues in the federal court action and Mr. Creveling failed to show that he had a property interest in the fish removed from the canal.

We agree. Each of the elements of res judicata has been met here and dismissal of Mr. Creveling's claims on summary judgment was therefore appropriate. *See id*. Mr. Creveling's federal action and state action are based on the removal of wild fish from the canal running through his property. Mr. Creveling specifically asserted conversion and unconstitutional taking in the federal action—the same claims he asserts here. The parties are the same and they appear in the same capacity as they did in Mr. Creveling's federal court action.

The federal court action resulted in a final judgment on the merits. *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 892, 1 P.3d 587 (2000). Principles of federal supremacy dictate that a federal judgment must be given full faith and credit in the state courts and that includes recognition of the preclusive effect of the doctrine of res judicata. *Loveridge v. Fred Meyer, Inc.*, 72 Wn. App. 720, 724, 864 P.2d 417 (1993), *aff'd*, 125

Wn.2d 759, 887 P.2d 898 (1995). We, therefore, conclude that Mr. Creveling's claims were properly dismissed on summary judgment. Those claims were raised and decided in the earlier federal proceeding.

B. Attorney Fees

The State requests an award of attorney fees incurred in defending against this appeal under RAP 18.9(a). The State contends that Mr. Creveling's appeal is frivolous under RAP 18.9(a) because he advances the argument that the United States Supreme Court may someday realize that wild fish attach to the land they are on. The State argues that any claim to ownership of the fish has already been properly dismissed.

RAP 18.9(a) authorizes us, on our own initiative or on a motion of a party, to order a party or counsel who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008). "'An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal.'" *Kinney v. Cook*, 150 Wn. App. 187, 195, 208 P.3d 1 (2009)

(quoting *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007), *review denied*, 162 Wn.2d 1009 (2008)). Further, all doubts as to whether an appeal is frivolous are resolved in favor of the appellant. *Id.*

Even resolving all doubt in favor of Mr. Creveling, this appeal has raised no debatable issue upon which reasonable minds could differ. He cites no new authority for reversal, nor does he make a rational, good-faith argument for modification of existing law. His appeal is without merit; it is frivolous. We, therefore, award the state its attorney fees pursuant to RAP 18.9.

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Brown, J.

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Korsmo, J.