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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A08-0192**

Janet Eileen Gunnink,  
Appellant,

Douglas John Gunnink,  
Appellant,

vs.

State of Minnesota Department of Revenue,  
Respondent.

**Filed April 28, 2009  
Affirmed  
Johnson, Judge**

Sibley County District Court  
File No. 72-CV-07-90

Janet Eileen Gunnink, 25303 461st Avenue, Gaylord, MN 55334 (pro se appellant)

Douglas John Gunnink, 25303 461st Avenue, Gaylord, MN 55334 (pro se appellant)

Lori Swanson, Attorney General, Kyle R. Gustafson, Assistant Attorney General, 445  
Minnesota Street, Suite 900, St. Paul, MN 55101-2127 (for respondent)

Considered and decided by Ross, Presiding Judge; Halbrooks, Judge; and Johnson,  
Judge.

## UNPUBLISHED OPINION

**JOHNSON**, Judge

Janet and Douglas Gunnink appeal from the district court's dismissal of their lawsuit against the Minnesota Department of Revenue on the basis of the doctrine of *res judicata*. We conclude that the Gunninks' second lawsuit arises from the same set of factual circumstances as a prior lawsuit against the department, which was decided on the merits, and that the Gunninks had a full and fair opportunity to litigate the matter in the prior lawsuit. Therefore, we affirm.

### FACTS

In September 2002, the Internal Revenue Service (IRS) determined that the Gunninks had failed to pay federal income taxes in 1996. In October 2003, as a result of the IRS determination, the department determined that the Gunninks also had failed to pay state income taxes in 1996 and 1997. The amount due to the state was approximately \$45,000.

In light of the Gunninks' tax delinquencies, the department sought to foreclose on real property belonging to the Gunninks. In May 2005, the Gunninks commenced an action in the Sibley County District Court to quiet title to the property and to obtain equitable relief. In April 2006, the district court held a hearing on the Gunninks' motion for a temporary restraining order (TRO), which sought to prevent the state from holding a foreclosure sale. Three days after the hearing, the district court issued an order denying the motion. The property was sold at a foreclosure sale shortly thereafter. The Gunninks

did not take any further action to pursue their claim. In January 2007, the district court dismissed the action, with prejudice. The Gunninks did not appeal.

In April 2007, the Gunninks commenced a second action in the Sibley County District Court to challenge the department's assessment, lien, and foreclosure of the property, for which they sought damages. In response, the department moved to dismiss the action on the ground that it is barred by the doctrine of *res judicata*. After a hearing, the district court granted the motion and dismissed the action. The Gunninks appeal.

### D E C I S I O N

The doctrine of *res judicata* precludes a party from pursuing an action commenced after the completion of a prior action if “(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter.” *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007) (quoting *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004)). “*Res judicata* applies equally to claims actually litigated and to claims that could have been litigated in the earlier action.” *Id.* “The application of *res judicata* is a question of law that we review de novo.” *Id.*

The Gunninks argue that the district court erred by concluding that the department satisfied each of the four requirements of the doctrine of *res judicata*. We will address each argument in turn.

### **A. Same Set of Factual Circumstances**

The Gunninks contend that the second case does not involve the same set of factual circumstances as the first case because the first case was “limited to the state’s action against the particular property liened.” When considering whether a claim is the same as a claim asserted in a prior case, the focus is on “whether the second claim ‘arise[s] out of the same set of *factual circumstances*.’” *Hauschildt*, 686 N.W.2d at 840 (quoting *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978)). “The ‘common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions.’” *Id.* (quoting *McMenomy v. Ryden*, 276 Minn. 55, 58, 148 N.W.2d 804, 807 (1967)). A court should inquire whether “the right to assert the second claim [arose] at the same time as the right to assert the first claim.” *Care Inst., Inc. v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000).

In both the first case and the second case, the Gunninks challenged the department’s assessment of unpaid taxes. In both cases, the department’s assessment was based on the Gunninks’ failure to pay income taxes in 1996 and 1997. In both cases, the Gunninks challenged the same lien. It is apparent that the two actions arise out of the same set of factual circumstances. It is immaterial that the Gunninks have pleaded different legal theories or prayed for different forms of relief. *See Brown-Wilbert, Inc.*, 732 N.W.2d at 220. Thus, the first requirement of *res judicata* is satisfied.

### **B. Same Parties**

The Gunninks argue that, even though the parties in both cases are the same, the second requirement of *res judicata* is not satisfied because “the IRS will have to be added

to this proceeding.” But the Gunninks did not actually join any other parties in the district court. Even if the IRS (or, more properly, the United States, *see* 26 U.S.C. §§ 7422(f), 7433(a) (2006)) had been made a party to the second case in the district court, the presence of another party would have no impact on the application of the doctrine of *res judicata* to the department. Thus, the second requirement of *res judicata* is satisfied.

### **C. Final Judgment on the Merits**

The Gunninks argue that there was no final judgment on the merits in the earlier case because the district court’s dismissal “was not based upon any motion or hearing.” “The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court.” Minn. R. Civ. P. 41.02(a). “Unless the court specifies otherwise in its order, [an involuntary] dismissal pursuant to this rule . . . operates as an adjudication upon the merits.” Minn. R. Civ. P. 41.02(c).

Here, the order dismissing the first case states, “Plaintiffs have taken no steps to pursue this lawsuit” beyond seeking a TRO, which was denied. The order further states, “The Complaint . . . is dismissed with prejudice . . . .” Thus, the third requirement of *res judicata* is satisfied.

### **D. Full and Fair Opportunity to Litigate**

The Gunninks argue that they did not have a full and fair opportunity to litigate their claim in the first case because they did not have an opportunity to challenge the district court’s “unsolicited decision to dismiss the proceeding.”

The question of whether a party had a full and fair opportunity to litigate a matter generally focuses on whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties.

*State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted).

In the first case, the Gunninks submitted written briefs and had oral argument on their motion for a TRO. The district court heard their arguments concerning the underlying assessment and the department's lien. The Gunninks have not identified any procedural errors or limitations on their ability to fully litigate their claims in the first case. The Gunninks complain that the district court dismissed the first case *sua sponte*, but the district court's dismissal occurred nine months after the denial of the Gunninks' motion for a TRO, during which time the Gunninks took no action to pursue their claim. Furthermore, the Gunninks did not appeal from the dismissal or bring a motion to vacate the judgment. Moreover, it is unclear whether the Gunninks had anything else to pursue in the first case after the denial of their motion for a TRO. They sought only injunctive relief, which, as a practical matter, became moot after the department seized and sold the property. Thus, the fourth requirement of *res judicata* is satisfied.

In sum, the district court did not err when it granted the department's motion to dismiss the Gunninks' second lawsuit against the department on the basis of the doctrine of *res judicata*.

**Affirmed.**