Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-003

JUNE TERM, 2004

	}	APPEALED FROM:
	}	
Peter Szymkowicz and Valerie Szymkowicz	}	Addison Superior Court
	}	
v.	}	DOCKET No. 210-10-02 Ancv
	}	
Town of Shoreham	}	Trial Judge: Hon. Helen M. Toor
	}	
	}	

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

Plaintiffs appeal pro se from the trial court' s partial summary judgment order, and from its order, after a trial, setting the value of their enclosed porch. They argue that the court erred by: (1) applying the doctrine of res judicata; and (2) allowing the Town to " revise" the 2002 Board of Civil Authority tax appeal decision through its corrected motion for summary judgment and list of undisputed facts. We affirm.

Plaintiffs own a home in Shoreham, Vermont. In 1997, the Town of Shoreham appraised plaintiffs' home for property tax purposes. Plaintiffs appealed the town' s appraisal to the Shoreham Board of Civil Authority (BCA) and then to the State Board of Appraisers. The State Board of Appraisers determined that the listed value of plaintiffs' property was $147,800. Plaintiff did not pursue an appeal of the appraisal with this Court. In 2001, plaintiffs again appealed the 1997 appraisal to the BCA. The BCA denied the appeal, and upheld the listed value of plaintiffs' property. In March 2002, plaintiffs requested a change in the valuation of their home because they had removed a deck. In June 2002, the listers reduced the value of the home by $628. In July 2002, plaintiffs filed a grievance challenging various aspects of the 1997 appraisal. Plaintiffs claimed, among other things, that the square footage of their home had been miscalculated. The listers agreed with this assertion, and reduced the appraised value of plaintiff' s home from $147,172 to $144,253. Plaintiffs appealed from this decision to the BCA, raising numerous claims of error related to the 1997 appraisal. The BCA accepted the new dimensions set forth by plaintiffs; however, in considering plaintiff' s appeal, the BCA conducted a site visit and discovered that plaintiffs had made improvements to their home, including new wiring, new trim and flooring, a new heating system, and an enclosed porch. The BCA consequently added $6028.79 to the appraised value of plaintiffs' home, resulting in a new list value of $150,281.79.

Plaintiffs appealed this determination to the trial court, and defendant filed a motion for summary judgment. The court granted defendant' s motion in part, finding that the doctrine of res judicata barred plaintiffs from re-litigating issues related to the 1997 appraisal. The court found that plaintiffs were entitled, however, to challenge the BCA' s decision to increase the fair market value of their home. The town filed a motion for summary judgment on this issue; it later filed a corrected motion after finding an error in the BCA' s original calculations. The town explained that the BCA had calculated the value of plaintiffs' enclosed porch at $18.60 per square foot rather than $14.30. The town thus asserted that the proper valuation of plaintiffs' porch was $4778.79, not $6028.79, and accordingly, the appraised value of their property should have been $149,032. The court denied defendants' motion for summary judgment. After holding a trial, and making findings on the record, the court assessed the value of the enclosed porch at $4157.01. Plaintiffs filed several post-judgment motions, which the court denied. This appeal followed.

Plaintiffs first argue that the court erred in granting partial summary judgment to defendant based on the doctrine of res judicata. In support of this argument, plaintiffs assert that: (1) the doctrine of res judicata does not bar litigation of prior

valuations of the same property; (2) sufficient time had elapsed to warrant a new appeal; (3) the case law on which the trial court relied was inapposite; (4) more than one appraisal was used in 2002 to assess the value of their property; and (5) the court erred in finding that the improvements that they made to their home were " new" and had not been assessed prior to the 2002 BCA decision.

" When reviewing a motion for summary judgment, we apply the same standard as the trial court: summary judgment is appropriate when the record clearly indicates there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Lane v. Town of Grafton, 166 Vt. 148, 150 (1997); see also V.R.C.P. 56(c). In this case, the court' s summary judgment decision rested on its application of the doctrine of res judicata. Res judicata bars the litigation of a claim or defense where there is a final judgment in former litigation involving identical or substantially identical parties, subject matter and causes of action. Berlin Convalescent Ctr., Inc. v. Stoneman, 159 Vt. 53, 56 (1992). The doctrine " bars not only issues actually litigated but also those which should have been raised in previous litigation." Id. (internal citation omitted). The applicability of the doctrine of res judicata to a given set of facts presents a question of law, which we review de novo. See State v. Pollander, 167 Vt. 301, 304 (1997) (applicability of res judicata is a question of law).

The trial court properly determined that the doctrine of res judicata barred plaintiffs from re-litigating issues concerning the 1997 appraisal of their property. As the court found, the State Board of Appraisers' decision as to the 1997 appraisal value of plaintiffs' property became final when plaintiffs failed to pursue their appeal with this Court. See Lamb v. Geovjian, 165 Vt. 375, 381 (1996) (res judicata applies to administrative decisions when an administrative agency acts in a judicial capacity and resolves disputed issues of fact properly before it that the parties have had an adequate opportunity to litigate). The court explained that, with the exception of the claim related to BCA' s decision to increase the fair market value of the property, plaintiffs were raising the same issues, or substantially the same issues, as those that had been previously litigated. Plaintiffs have not demonstrated that these findings are clearly erroneous. Their assertion that the doctrine of res judicata does not bar litigation of prior valuations of the same property is without merit. The case on which plaintiffs rely for this proposition, City of Barre v. Town of Orange, 139 Vt. 437, 439 (1981), involved two different appraisals. In Town of Orange, the Court stated that the doctrine of res judicata would not bar a party from challenging the 1973 appraised value of a parcel of property, despite an earlier appeal involving the same property, because the only issue in the prior appeal was the 1971 appraisal value. See id. (explaining that doctrine of res judicata only applies to issues that were or could have been adjudicated in the earlier action). In this case, plaintiffs are challenging the same 1997 appraisal that they have previously challenged. We have considered plaintiffs' remaining arguments, and find them equally without merit. The court' s findings are supported by the evidence, and they support its legal conclusion that the doctrine of res judicata bars plaintiffs from re-litigating issues related to the 1997 appraisal. We therefore reject plaintiffs' first claim of error.

Plaintiffs' second claim of error is more difficult to discern. They assert that the court erred by allowing defendants to revise the BCA' s 2002 decision through its corrected motion for summary judgment and list of undisputed facts. Plaintiffs appear to argue that the town' s summary judgment motion constituted an untimely appeal because it stated that the value of their enclosed porch differed from that determined by the BCA. This argument lacks merit. First, a motion for summary judgment is not an appeal. See V.R.C.P. 56(c). In any event, the trial court denied defendant' s motion for summary judgment, and held a trial to ascertain the value of the porch. It reached a judgment in plaintiffs' favor. Plaintiffs have not provided the Court with transcripts of the trial proceedings; thus, to the extent that they argue that the court' s determination is not supported by the evidence, they have failed to meet their burden on appeal. See V.R.A.P. 10(b)(2); V.R.A.P. 28(a)(4); see also, In re S.B.L., 150 Vt. 294, 297 (1988) (party seeking appellate review of alleged errors by trial court bears burden of demonstrating that errors exist). To the extent that plaintiffs raise other claims of error, we cannot discern them, and we therefore do not address them. See Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992).

The town has requested that the Court award it its costs. We direct the town' s attention to V.R.A.P. 39 for the proper procedure for filing such a request.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Paul L. Reiber, Associate Justice