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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>WILLIAM DARYL STUTE; et al.,</p> <p>Plaintiffs - Appellants,</p> <p>v.</p> <p>THE CITY OF WESTPORT; et al.,</p> <p>Defendants - Appellees.</p>

No. 06-35939

D.C. No. CV-06-05453-RBL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted July 1, 2008**

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

William Daryl Stute and Eva M. Stute appeal pro se from the district court's summary judgment in favor of defendants in the Stutes' 42 U.S.C. § 1983 action.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Albano v. Norwest Fin. Haw., Inc.*, 244 F.3d 1061, 1063 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment on the basis of res judicata because the undisputed evidence establishes that this lawsuit involves the same cause of action that was litigated in prior federal actions between the same parties and their privies, and those actions concluded in final judgments on the merits. *See Headwaters Inc. v. U.S. Forest Serv.*, 399 F.3d 1047, 1051-54 (9th Cir. 2005) (explaining doctrine of res judicata).

Appellants' motion for default judgment, filed on March 21, 2008, is denied.

AFFIRMED.