

FILED

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

Starcher, J., concurring:

Under the doctrine of collateral estoppel – also called the doctrine of issue preclusion – “once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits based on a different cause of action involving a party to the prior litigation.” *Montana v. United States*, 440 U.S. 147, 153, 99 S.Ct. 970, 59 L.Ed.2d 210 (1979). Collateral estoppel “has the dual purpose of protecting litigants from the burden of relitigating an identical issue with the same party or his privy and of promoting judicial economy by preventing needless litigation.” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 58 L.Ed.2d 552 (1979). It is well-settled that “a litigant who was not a party to a prior judgment may nevertheless use that judgment ‘offensively’ to prevent a defendant from relitigating issues resolved in the earlier proceeding.” *Parklane*, 439 U.S. at 326.

I write separately to clarify that the doctrine of collateral estoppel can be used by a litigant in a claim under the Unfair Trade Practices Act, *W.Va. Code*, 33-11-1 to -10, and even to establish a “general business practice” under *W.Va. Code*, 33-11-4(9). However, the litigant must meet the four conditions set forth in Syllabus Point 1 of *State v. Miller*, 194 W.Va. 3, 459 S.E.2d 114 (1995).