

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

FILED  
JAMES BONINI  
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2011 MAR 28 PM 3:40

JOHN D. FRESHWATER

U.S. DISTRICT COURT  
SOUTHERN DIST. OHIO  
EAST. DIV. COLUMBUS

Case No. 2:11-cv-00190

Plaintiff  
vs.

Judge: FROST

MOUNT VERNON CITY SCHOOL  
DISTRICT BOARD OF EDUCATION, et al.

Defendants.

**RESPONSE BY JOHN FRESHWATER TO ORDER OF MARCH 10, 2011**

This case belongs in the state court as it was filed pursuant to Ohio Revised Code Section 3319.16. Ohio Revised Code Section 3319.16 creates a statutory right. Res Judicata does not apply if the facts, circumstances or transaction are different from a previous suit. John Freshwater dismissed 2:09cv464 in September 2010. At all times prior to January 10, 2011, John Freshwater was a suspended employee based upon specified allegations. On or after January 10, 2011, Defendant Mount Vernon Board of Education terminated the teaching contract of John Freshwater based upon sustained allegations that did not include all of the specified allegations previously levied against me. The termination of John Freshwater upon sustained allegations amounts to a different set of facts, circumstances and transaction, the nature of which , importantly, could not have been joined as claims in the first action, 2:09cv464. Further, John Freshwater seeks a remedy that was not obtained nor could have been obtained in the first action because I had not been terminated until after January 10, 2011. My cause of action arose after January 10, 2011.

John Freshwater's appeal of his termination is being done pursuant to Ohio Revised Code Section 3319.16. The key to understanding this matter is that John Freshwater is appealing his termination pursuant to the law of Ohio Revised Code, the appeal of which permits John Freshwater to appeal upon all the claims he asserted during the action brought pursuant to Ohio Revised Code 3319.16. The "action" referenced is my termination pursuant to Ohio Revised Code Section 3319.16. The "action" is not an action pursuant to 2:09cv464. Res judicata does not prevent an appeal of a termination action pursuant to Ohio Revised Code Section 3319.16. My challenge in the appeal pursuant to Ohio Revised Code Section 3319.16 is a challenge of the judgment from the termination hearing rather than trying to start a new trial. If the State of Ohio Legislature wanted my appeal pursuant to Ohio Revised Code Section 3319.16 to begin in or be remanded to a federal court, then Ohio Revised Code Section 3319.16 would have been so written.

My case should be remanded back to the Knox County Court of Common Pleas, Knox County, Ohio.

Respectfully submitted,

  
John Freshwater  
Plaintiff

**CERTIFICATE OF SERVICE**  
**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE SOUTHERN DISTRICT OF OHIO**  
**EASTERN DIVISION**

I hereby certify that on MARCH 28th / 2011, the foregoing was sent by email and U.S. Mail to counsel of record.

JOHN FRESHWATER  
John Freshwater  
Plaintiff

Sarah J. Moore, Esq. , 3 Summit Park Drive, Suite 400, Cleveland, Ohio 44131