STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0184

Jayson Dock, et al.,
Appellants,

vs.

Waconia Landing Homeowners Association, Inc.,
Respondent.

Filed December 4, 2017
Affirmed
Larkin, Judge

Carver County District Court
File No. 10-CV-16-817

John P. Boyle, Kelly C. McGinty, Moss & Barnett, A Professional Association, Minneapolis, Minnesota (for appellants)

Margaret E. Dalton, Todd M. Winter, Stoel Rives LLP, Minneapolis, Minnesota (for respondent)

Considered and decided by Larkin, Presiding Judge; Cleary, Chief Judge; and Worke, Judge.

U N P U B L I S H E D O P I N I O N

LARKIN, Judge

Appellant homeowners challenge the district court's award of summary judgment to respondent homeowners association in this dispute regarding respondent's installation

of a dock, arguing that the district court erred in finding that their lawsuit is barred under the doctrine of res judicata. We affirm.

FACTS

Appellants Jayson Dock and Cristine Dock (the Docks) live in Waconia Landing Addition (Waconia Landing), a residential subdivision on Lake Waconia. The Docks' residence abuts Lake Waconia and has 112 feet of shoreline. Each property owner within Waconia Landing is a member of respondent Waconia Landing Homeowners Association Inc. (the association), including the Docks. An outlot is directly adjacent to the Docks' property and has approximately 90 feet of lakeshore on Lake Waconia. Six of the homes in Waconia Landing (6F Group) abut a marshy portion of Lake Waconia. The marshy conditions of their shoreline prevent the 6F Group homeowners from using a dock or launching a boat on Lake Waconia.

In March 2000, the Declaration of Single Family Residential Covenants, Conditions, and Restrictions for Waconia Landing Addition (declaration) was recorded in the office of the Carver County Recorder. The declaration expressly granted the 6F Group the "right to install, store and maintain one dock with six boat lifts" off of the outlot. The 6F Group currently installs and maintains a seasonal dock off of the outlot (6F dock) with space for six watercraft. In addition, the association installs and maintains a seasonal dock (association dock) off of the outlot with space for six watercraft that is available for use by all of the association members.

In May 2014, the Docks sued the association and the 6F Group homeowners, asserting trespass and breach-of-contract claims. The Docks alleged that for several years,

the association and 6F docks had been "installed and maintained at a sharp angle from the [outlot] in such a manner that the [docks] cross[ed] over and encroach[ed] upon that portion of Lake Waconia located in front of the Dock Property." The Docks alleged that the placement of the association and 6F docks created a safety hazard and that it interfered with the Docks' riparian rights. The Docks further alleged that the placement of the docks violated the declaration "because it unreasonably interferes with, annoys, and disturbs [them]; constitutes an annoyance and nuisance to [them]; and violates Minnesota law and the DNR published dock installation guidelines." The Docks requested a declaratory judgment "declaring that extending the boundary line shared by [the outlot] and the Dock Property establishes the Riparian Boundary between the portion of Lake Waconia located in front of [the outlot] and the portion of Lake Waconia located in front of the Dock Property."

The district court granted the association and 6F Group's motion to dismiss the Docks' complaint. First, the district court reasoned that the Docks did not "have exclusive possession [of] Lake Waconia and ha[d] not shown that they have a legal right that ha[d] been trespassed upon." Second, the district court found that the Docks failed to state a viable claim for relief regarding any of the alleged breaches of the declaration. The district court found that the Docks' breach-of-contract claim based on a DNR publication did not state a viable claim for relief because the publication's installation guidelines were not rules or regulations and therefore did not have the force of law. The district court also found that the Docks' other breach-of-contract claims were without merit because they failed to "explain how allegedly annoying or offensive activity that occurs in Lake

Waconia's public water could constitute annoying or offensive activity that occurs on [the outlot]" that would be subject to the declaration.

In August 2016, the Docks once again sued the association, alleging that the association did not have a legal right to install and maintain the association dock. The Docks relied on the declaration, two Waconia City Council resolutions regarding the outlot, an agreement between the city and Waconia Landing's developer, and DNR regulations. The Docks also alleged that the dense use of the association dock had "created a dangerously-congested condition that ha[d] interfered with the safe use by the Docks of their dock." The Docks requested a declaratory judgment regarding (1) "[t]he Association's right to install and maintain a separate dock other than the 6F dock off of [the outlot]," (2) "[w]hether overnight parking of watercraft is permitted on a dock off of [the outlot]," and (3) "[w]hether a watercraft other than one owned by a 6F property owner may be moored off of [the outlot]."

The association moved to dismiss the Docks' complaint under Minn. R. Civ. P. 12.02(e) for failure to state a claim upon which relief can be granted, alleging that the association had a lawful right to install and maintain the association dock and that the Docks' claim was barred under the doctrine of res judicata. The district court granted the association's motion. The Docks appeal.

D E C I S I O N

I.

The Docks contend that the district court erred in dismissing their complaint under Minn. R. Civ. P. 12.02(e) under the doctrine of res judicata.

A pleading can be dismissed under Minn. R. Civ. P. 12.02(e) if it "fail[s] to state a claim upon which relief can be granted." A pleading should be dismissed under rule 12.02(e) "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted). Appellate courts review orders to dismiss under Minn. R. Civ. P. 12.02(e) de novo. *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013). This court considers "only the facts alleged in the complaint, accepting those facts as true." *Id.* (quotation omitted). However, this court is "not bound by legal conclusions stated in a complaint." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008).

"Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). "Res judicata . . . prevents parties from splitting claims into more than one lawsuit and precludes further litigation of the same claim." *Loo v. Loo*, 520 N.W.2d 740, 744 n.1 (Minn. 1994). The res judicata doctrine "reflects courts' disfavor with multiple lawsuits for the same cause of action and wasteful litigation." *Schober v. Comm'r of Revenue*, 853 N.W.2d 102, 111 (Minn. 2013) (quotation omitted).

Res judicata bars a subsequent claim when "(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; (4) the estopped party had a full and fair opportunity to litigate the matter." *Hauschildt*, 686 N.W.2d at 840. "All four prongs must

be met for res judicata to apply." *Id.* "Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007). However, "[r]es judicata is not applied rigidly but is a flexible doctrine in which the focus is on whether its application would work an injustice on the party against whom estoppel is urged." *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 925-26 (Minn. 2015) (quotation omitted). This court reviews the application of res judicata de novo. *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011).

The Docks concede that there was a final judgment on the merits in the prior litigation. And although the Docks note that the 6F Group homeowners were defendants in the prior litigation and they are not defendants in this action, the Docks do not argue that the same-parties prong of the res judicata four-part test is not satisfied. We therefore focus on the remaining two res judicata inquiries: whether the Docks' earlier claim involved the same set of factual circumstances and whether the Docks had a full and fair opportunity to litigate the matter.

Factual Circumstances

The Docks argue that "[t]he Prior Litigation did not involve the same factual circumstances, the same cause of action, or the same claims" as this action. Specifically, the Docks contend that their "request for a judicial determination regarding the permitted number of docks differs in form, purpose, and scope from the Prior Litigation" and that "[t]he proof required to determine the issues in this action differs from the proof required in the Prior Litigation."

"Identity of subject matter does not establish that two claims are the same cause of action." *Care Inst., Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000). "Two causes of action are the same when they involve the same set of factual circumstances or when the same evidence will sustain both actions." *SMA Servs., Inc. v. Weaver*, 632 N.W.2d 770, 774 (Minn. App. 2001) (quotation omitted). Two causes of action involve the same set of factual circumstances when "the same operative nucleus of facts is alleged in support of the claims." *Anderson v. Werner Cont'l., Inc.*, 363 N.W.2d 332, 335 (Minn. App. 1985), *review denied* (Minn. June 24, 1985); *see Hauschildt*, 686 N.W.2d at 840 (describing a claim or cause of action as "a group of operative facts giving rise to one or more bases for suing" (quotation omitted)). A change in legal theory cannot be used to avoid res judicata. *Hauschildt*, 686 N.W.2d at 837; *Nitz v. Nitz*, 456 N.W.2d 450, 452 (Minn. App. 1990); *see, e.g., Dollar Travel Agency, Inc. v. Nw. Airlines, Inc.*, 354 N.W.2d 880, 882-83 (Minn. App. 1984) (holding that judgment in earlier contract action barred later tort action because the plaintiff could have litigated both legal theories in the first action).

The Docks argue that because the relevant evidence in this action is different than that in the prior action, the two lawsuits do not involve the same cause of action. They assert that "three of the governing documents were not even at issue in the Prior Litigation, and the fourth, the Declaration, was raised for a wholly different purpose." We are not persuaded. Although the Docks submitted additional documents in this action regarding whether the association is authorized to install the association dock, the Docks alleged the same "operative nucleus of facts" in both actions. In the prior action, the Docks sued the

association, alleging that the placement of the association dock created a safety hazard, interfered with their riparian rights, and violated the declaration and DNR regulations. In this action, the Docks again sued the association, alleging that the association dock had created a "dangerously-congested condition," interfered with the Docks' use of their dock, and violated the declaration and DNR regulations. The two actions clearly involve the same set of factual circumstances.

The Docks also argue that their prior action "concerned the location and trajectory of the Association's docks into the lake" and "whether an enforceable riparian boundary line existed in the waters beyond the natural extensions of the property line between [the outlot] and the Docks' parcel." (Emphasis omitted.) They contrast those claims with the relevant legal question in this case: whether "one dock or . . . two docks, and more than six watercraft [are] authorized by the governing documents." The Docks argue that under *Nelson v. Am. Family Ins. Grp.*, 651 N.W.2d 499, 502 (Minn. 2002), res judicata does not apply because the two actions are not identical to each other.

In *Nelson*, a plaintiff prevailed in a personal injury action in South Dakota against a driver following an automobile accident. 651 N.W.2d at 502. The plaintiff then sued her own insurance company in Minnesota to recover future medical expenses and past income loss caused by the accident. *Id.* The insurance company argued that the second action was barred by res judicata. *Id.* The supreme court contrasted the two actions, noting that the South Dakota action "was a personal injury tort action brought to recover damages arising out of personal injuries and the negligence of the defendant" and that the Minnesota action was "for breach of contract to recover mandatory no-fault insurance benefits under an

insurance policy." *Id.* at 512. The supreme court concluded that the plaintiff was "not barred by res judicata from asserting her cause of action because the cause of action in the prior litigation [was] not identical to the cause of action in [that] litigation." *Id.*

The Docks' reliance on *Nelson* is misplaced. First, *Nelson* involved two separate actions brought against two different defendants, unlike the two actions against the association here. Second, the two actions in *Nelson* involved distinct underlying disputes. Although both actions were related to the automobile accident, one was a personal injury tort action against the tortfeasor and the other was a breach-of-contract action against the plaintiff's insurer. Here, both of the Docks' actions are based on the same underlying dispute regarding the association's installation of the association dock. Third, since *Nelson*, the supreme court has once again stated that a change in legal theory cannot be used to avoid res judicata. *Hauschildt*, 686 N.W.2d at 837. The differences that the Docks identify in their two actions against the association merely show a change in legal theory. The underlying operative facts, that is, the existence of the association dock, the alleged hazard caused by the dock, the dock's alleged interference with the Docks' enjoyment of their property, and the association's alleged violation of the declaration and DNR regulations are the same.

In sum, the Docks' earlier claim involved the same set of factual circumstances as this action.

Full and Fair Opportunity to Litigate

"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).

The Docks argue that they "did not receive a full and fair opportunity in the prior litigation to litigate the claims asserted in this matter" because the claims at issue in this action were not "raised, addressed, or decided" in the prior litigation. Whether the association's right to install and maintain the association dock was raised, addressed, or decided in the prior action is immaterial because res judicata applies both to claims actually litigated and to claims that could have been litigated. *Brown-Wilbert*, 732 N.W.2d at 220. The key question is whether the Docks had a full and fair opportunity to litigate the association's right to install the association dock in the prior lawsuit.

The Docks argue that the prior lawsuit was "dismissed before any discovery was undertaken" and that the Docks did not have a chance to fully develop the facts and issues. The Docks assert that "[t]he issues being raised in the 2016 lawsuit came to light during the course and conduct of criminal proceedings" occurring after the prior litigation and before this action, when "new documents were obtained during the discovery that occurred in those proceedings." The Docks argue that this action is based on three "new" governing documents identified during the criminal proceedings and that "[i]t is those governing documents, and not the Declaration, that confer any arguable right to the placement of more than one dock and six watercraft off of [the outlot]."

The three governing documents—two Waconia city council resolutions and an agreement between the city and Waconia Landing's developer—are dated 1999, 2000, and

2000 respectively.[1] Each document generally states that the association may install a single dock with six slips for watercraft. The Docks assert that "[b]ecause the Declaration conveys no dock or mooring rights to the Association, it is the other three governing documents that need to be construed, in light of applicable DNR rules and regulations, to determine what dock and mooring rights, if any, those three governing documents convey to the Association."

Contrary to the Docks' assertion, the declaration is consistent with the three governing documents because it authorizes the placement of one dock and six watercraft off of the outlot. Thus, the three governing documents from 1999 and 2000 did not reveal new information relevant to the Docks' claims, and the Docks did not need to discover those documents to bring the current action. In sum, we discern no justification for the Docks' failure to allege, in their first action, that the association was not authorized to install and maintain the association dock. And because a ruling that the association could not install the association dock would have addressed the Docks' complaints about the placement of that dock, they had a significant incentive to fully litigate that issue in the prior litigation.

In sum, the Docks had a full and fair opportunity to litigate whether the association was authorized to install and maintain the association dock in the prior litigation. Because all four parts of the test for application of res judicata are satisfied, its application was proper in this case.

[1] A memorandum from the Waconia city planner dated 1999 is attached to the 2000 city council resolution.

Additional Arguments

The Docks contend that certain contractual language in the declaration prevents the application of res judicata here. That language states that members of the association have "the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provision of this Declaration" and that the failure of a member to "enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so." The Docks do not cite caselaw in support of their contention that this contractual language bars application of res judicata here.

The association counters that a "no-waiver clause in a contract" cannot override the doctrine of res judicata because "such a concept is fundamentally incompatible with a court's judicial power to conclusively decide cases." The association stresses the policy reasons underlying res judicata, including "the interest in avoiding unnecessary litigation, the economy of judicial time, and the public policy favoring the establishment of certainty in legal relations." *Wessling v. Johnson*, 424 N.W.2d 795, 799 (Minn. App. 1988), *review denied* (Minn. July 28, 1988).

In the context of forum-selection clauses, we have recognized that in some circumstances, courts may refuse to enforce an agreed-upon contractual provision despite the parties' general right to contract, if enforcement contravenes the public policy of "'[j]udicial economy and the prevention of multiple actions on similar issues.'" *See Maslowski v. Prospect Funding Partners LLC*, 890 N.W.2d 756, 763-64 (Minn. App. 2017) (quoting *Interfund Corp. v. O'Byrne*, 462 N.W.2d 86, 89 (Minn. App. 1990), *review denied*

(Minn. May 16, 2017)). These same policy concerns underlie the doctrine of res judicata. *See Schober*, 853 N.W.2d at 111 (noting that the res judicata doctrine "reflects courts' disfavor with multiple lawsuits for the same cause of action and wasteful litigation"). Based on the policy concerns underlying the doctrine of res judicata and its clear application in this case, we are not willing to treat the relevant language in the declaration as a waiver of the doctrine in the absence of legal authority suggesting we should do so.

Lastly, the Docks contend that dismissal of "this action on res judicata grounds would 'work an injustice' on [them]" by preventing them from "ever obtaining a legal determination on the fundamental question of whether the governing documents authorize one or two docks and more than six watercraft off of [the outlot]." Because this issue was known and the Docks had a full and fair opportunity to litigate it in their prior action, application of the doctrine of res judicata does not work an injustice on the Docks.

Affirmed.