STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1485

Philip Carlson,
Appellant,

Virginia Carlson,
Appellant,

vs.

Minnesota Department of Labor and Industry,
Respondent,

Bryan Crane,
Respondent,

Karen Crane,
Respondent.

Filed June 22, 2020
Affirmed
Reyes, Judge

Ramsey County District Court
File No. 62-CV-18-7290

Philip Carlson, Virginia Carlson, Wayzata, Minnesota (pro se appellants)

Keith Ellison, Attorney General, Sarah L. Krans, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Labor and Industry)

Bryan Crane, Karen Crane, Maple Grove, Minnesota (pro se respondents)

Considered and decided by Bryan, Presiding Judge; Reyes, Judge; and Bratvold, Judge.

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

REYES, Judge

Appellants challenge the district court's order granting respondents' motion to dismiss appellants' 11 claims on the ground that res judicata bars the claims. Appellants also challenge the district court's dismissal of their motions as moot. We affirm.

FACTS

This case involves two pro se litigants, appellants Virginia and Philip Carlson (the Carlsons), who have been involved in extensive civil, administrative, and criminal litigation, much of which arises from events related to a contract for residential construction between the Carlsons and respondents Bryan and Karen Crane (the Cranes).

As relevant here, the Cranes entered into a contract with the Carlsons and their company, Architektur Inc., in 2012 for the designing and building of the Cranes' home (the contract). The Cranes terminated the contract when they learned that the Carlsons made false representations about their professional licenses, that Philip Carlson did not have a residential-building-contractor license, and that the state had charged the Carlsons with felony theft by swindle in relation to another construction project.

In August 2013, Architektur Inc. sued the Cranes for breach of contract, unjust enrichment, and foreclosure on a mechanic's lien, all related to the contract. The Cranes filed a counterclaim against the Carlsons as third-party defendants[1] for fraud and breach of

[1] The Carlsons were represented by counsel at this point, but their counsel withdrew shortly before the hearing on the Cranes' motion for summary judgment, and they proceeded pro se.

contract, also based on the contract. The district court granted summary judgment for the Cranes and dismissed Architektur Inc.'s complaint, concluding that the Carlsons fraudulently misrepresented material facts to the Cranes to induce them into signing the contract. The Carlsons appealed, but we dismissed that appeal based on their failure to pay the filing fee.

Respondent Department of Labor and Industry (DLI) issued a cease-and-desist order against the Carlsons in 2014, prohibiting them from representing themselves as residential building contractors and ordering them to pay penalties. In 2015, the Carlsons appealed from a default judgment on the 2014 DLI cease-and-desist order. *See In re Architektur, Inc.*, No. A15-1840, 2016 WL 4723380 (Minn. App. Sept. 12, 2016), *review denied* (Minn. Nov. 23, 2016). The Carlsons argued that they did not receive notice of the May 19, 2015 hearing that led to the default judgment, in violation of their procedural due-process rights, and that DLI lacked jurisdiction over the "design-build profession[s]." *Id.* at *2-4. We concluded that the scope of work in the Carlsons' sworn construction statement met the definition of a "residential building contractor," giving DLI authority over the Carlsons. *Id.* at *4. For the Carlsons' due-process claim, we concluded that DLI sent them a "constitutionally sufficient [] notice and an opportunity to be heard." *Id.* at *2-3.

In 2018, the Carlsons sued the Cranes, alleging breach of contract and fraud based on the Cranes submitting "[f]alse affidavits." *See Carlson v. Crane*, No. A18-1666, *4 (Minn. App. July 1, 2019) (order op.) (alteration in original), *review denied* (Minn. Oct. 15, 2019). We affirmed the district court's dismissal with prejudice based on res judicata,

including on the breach-of-contract claim. We concluded that res judicata did not bar their fraud claim because they could not have pursued it until after the Cranes filed the affidavits in the 2013 breach-of-contract case, but that they failed to meet the heightened pleading standard for fraud claims under Minn. R. Civ. P. 9.02.

Here, the Carlsons alleged 11 causes of action: (1) "malice" against the Cranes and DLI; (2) negligence against DLI; (3) fraud by the Cranes and DLI; (4) "fraud: perjury" by the Cranes and DLI (5) "fraud: theft" by the Cranes and DLI; (6) breach of contract by the Cranes; (7) "duty to disclose" against the Cranes and DLI; (8) "sufficiency of the evidence"; (9) "withheld evidence" by the Cranes and DLI; (10) "constitutional rights denied" in an unspecified proceeding; and (11) intentional infliction of emotional distress (IIED) by DLI. (Emphases omitted.)

The Carlsons also brought motions (1) to order alternative dispute resolution; (2) to stay a June 17, 2019 motion hearing; (3) in limine to limit evidence, strike evidence, continue for discovery, and accept their amended response; and (4) for default judgment against the Cranes for failing to file an answer after being served the day of the motion hearing.

DLI moved to dismiss the complaint with prejudice under Minn. R. Civ. P. 12.02(e) on the basis that res judicata and collateral estoppel bar the Carlsons' claims and that they otherwise fail to state a claim upon which relief can be granted. Following a motion hearing, the district court granted DLI's motion, concluding that res judicata barred all of

the Carlsons' claims. It also dismissed as moot several pending motions that the Carlsons had brought. This appeal follows.[2]

D E C I S I O N

The Carlsons argue that the district court improperly dismissed (1) their claims, based on res judicata; (2) their complaint with prejudice as to all parties; and (3) their outstanding motions as moot. We address each argument in turn.

We review de novo a district court's decision to grant a motion to dismiss and consider the legal sufficiency of the claims for relief based on "the facts alleged in the complaint, accepting those facts as true" and construing "all reasonable inferences in favor of the nonmoving party." *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). We may also "take judicial notice of adjudicated findings in a prior proceeding." *Rohricht v. O'Hare*, 586 N.W.2d 587, 589 (Minn. App. 1998), *review denied* (Minn. Feb. 24, 1999).

I. The district court properly granted DLI's motion to dismiss.

The Carlsons argue that the district court abused its discretion by granting DLI's entire motion to dismiss based on res judicata. The Carlsons' argument is misguided. Res

[2] As DLI notes, the Carlsons filed documents in their addendum that are not in the record or that differ from similar documents in the record, including an email Virginia Carlson sent on October 29, 2012, an email Virginia Carlson sent on October 15, 2012, and a prehearing notice order and envelope. The appellate record consists only of "[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings, if any." *See* Minn. R. Civ. App. P. 110.01. Because these documents are not in the record on appeal, we do not consider them. *See Stageberg v. Stageberg*, 695 N.W.2d 609, 613 (Minn. App. 2005), *review denied* (July 19, 2005).

judicata bars most of their claims, while the remaining claims fail to state a claim upon which relief can be granted.

A. Claims properly dismissed based on res judicata

The Carlsons argue that res judicata does not apply because none of its elements are met, it does not apply to default judgments, and it does not bar fraud claims.

We review the applicability of res judicata de novo. *See Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). If it can apply, we review the district court's decision to apply it for an abuse of discretion. *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 755 (Minn. App. 2000). Res judicata is an "absolute bar" to a later 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; and (4) the estopped party had a full and fair opportunity to litigate the matter." *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011) (footnote omitted). Res judicata is based on the "well-established" principle "that a party should not be twice vexed for the same cause, and that it is for the public good that there be an end to litigation." *Brown-Wilbert*, 732 N.W.2d at 224 (quoting *Hauser v. Mealey*, 263 N.W.2d 803, 806-07 (Minn. 1978) (internal quotation omitted)). It applies to claims both actually litigated and those "that *could have been litigated* in the earlier action." *Id.* at 220 (emphasis added). "The common test for determining whether an action is precluded is to determine whether the same evidence will sustain both actions." *Mach v. Wells Concrete Prod. Co.*, 866 N.W.2d 921, 925 (Minn. 2015) (quotation omitted). We examine the four elements in turn.

1. Same set of factual circumstances

First, all of the claims involve the affidavits the Cranes submitted, the contract, and DLI's cease-and-desist order and penalties. The Carlsons do not meaningfully argue that their claims arise out of different factual circumstances. Instead, they argue that they have not previously brought these specific claims.

2. Same parties or their privies

Second, the Carlsons' claims against the Cranes involve the same parties as in the 2013 case and the 2018 case. Their claims against DLI involve the same parties as their 2015 appeal of DLI's default-judgment order.

3. Final judgment on the merits

Third, "a judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated, or otherwise modified." *Brown-Wilbert*, 732 N.W.2d at 221. A district court's dismissal of an action constitutes a judgment on "the merits." *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001); Minn. R. Civ. P. 41.02.

Each of the three relevant cases reached a final judgment on the merits. The 2013 breach-of-contract case reached a final judgment on the merits when the district court entered its summary-judgment dismissal. We thereafter dismissed the Carlsons' appeal because they did not pay the required filing fee. The Carlsons did not file a petition for review of that order by the Minnesota Supreme Court, and the 30-day deadline for doing so has elapsed. *See* Minn. R. Civ. App. P. 117, subd. 1(a). The Carlsons' 2018 breach-of-contract and fraud case against the Cranes likewise reached a final judgment on the merits

when the district court dismissed it with prejudice. We affirmed that final judgment, and the supreme court denied review in October 2019.

The Carlsons argue that the 2015 default administrative judgment in the DLI cease-and-desist proceeding cannot be the basis for res judicata. But res judicata also applies to default judgments. *See Roberts v. Flanagan*, 410 N.W.2d 884, 886-87 (Minn. App. 1987). And the authority to which they cite for their argument holds that res judicata applies to administrative actions unless the administrative agency acted outside of its jurisdiction, see *Wilson v. Comm'r of Revenue*, 619 N.W.2d at 198, 199-200 (Minn. 2000), there are changed circumstances, see *Erickson v. Comm'r of Dep't of Human Servs.*, 494 N.W.2d 58, 61-62 (Minn. App. 1992), or the proceeding involves a recurring matter, see *Wangen v. Comm'r of Pub. Safety*, 437 N.W.2d 120, 123 (Minn. App. 1989), *review denied* (Minn. May 12, 1989). These circumstances are not present here. The Carlsons appealed the 2015 default judgment to this court, we issued an opinion affirming the entry of the default judgment, and the supreme court denied the Carlsons' petition for further review. *See In re Architektur, Inc.*, 2016 WL 4723380. This constitutes a final judgment on the merits. *See Surf & Sand, Inc. v. Gardebring*, 457 N.W.2d 782, 787 (Minn. App. 1990) (stating res judicata applies to administrative proceedings involving "administrative determinations or access to a state appellate court"), *review denied* (Minn. Sept. 20 1990).

4. Full and fair opportunity to litigate

The fourth element "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." *Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, 519 (Minn. App. 2017) (quoting *State v. Joseph*, 636 N.W.2d 322, 329 (Minn. 2001)), *review denied* (Minn. June 18, 2019). Res judicata does not apply when the jurisdiction of the court or other formal barriers prevent a party from raising an issue in the first action. *Id.* But it can apply to claims of fraud in the prior proceeding. *See, e.g.*, *Hansen v. Am. Nat'l. Bank*, 396 N.W.2d 642, 646-47 (Minn. App. 1986) (concluding res judicata bars fraud claim based in part on false testimony because issue previously raised and decided).

The Carlsons either did litigate or had the opportunity to litigate all of their claims against the Cranes in the 2013 breach-of-contract case and the 2018 breach-of-contract and fraud case. Their "malice," fraud, and "fraud: perjury" claims against the Cranes are all based on the "false affidavits" that the Carlsons have previously argued that the Cranes submitted. Their remaining claims against the Cranes of "fraud: theft" based on the Cranes obtaining judgments against them, breach of contract, "duty to disclose" based on the Cranes' failure to disclose that the Carlsons committed no violation, and "withheld evidence," for failing to provide a July 31, 2014 district court order, either were the subject of prior litigation, such as the breach-of-contract claim, or could have been.

Regarding their claims against DLI, the Carlsons either litigated or had the opportunity to litigate several of the claims during the 2015 appeal of DLI's cease-and-desist order. Further, they utilized the opportunity to appeal that order to this court, when they argued multiple theories of why the default judgment and imposition of the cease-and-desist order were improper. *See In re Architektur, Inc.*, 2016 WL 4723380, at *2, 4-5. In these proceedings, they had a full and fair opportunity to litigate their claims of fraud, based

on DLI's lack of jurisdiction, improper notice, finding them in default, and failing to acknowledge their request for a new hearing; "fraud: perjury" for DLI "rely[ing] on perjurious information" and "ma[king] assertions that constitute perjury"; and "sufficiency of the evidence," based on a lack of evidence about the Carlsons' classification as residential building contractors. We specifically addressed the Carlsons' arguments that they lacked notice and that they are not a "residential building contractor" in *In re Architektur, Inc.*, 2016 WL 4723380, at *2-3. They do not identify in their "fraud: perjury" claim which assertions by DLI constitute perjury, but the claim appears to be based on the previously decided issues of DLI's jurisdiction and notice. They also could have argued prior to the default judgment that DLI relied on false assertions.

However, the Carlsons did not have an earlier opportunity to bring claims against DLI for "malice," negligence, "duty to disclose," "withheld evidence," IIED, or "fraud: theft," to the extent that they based those claims in part on the final judgment in the DLI cease-and-desist proceeding and not on DLI's initial decision to issue the cease-and-desist order. *See Brown-Wilbert*, 732 N.W.2d at 220. Res judicata therefore does not apply to those claims.

B. Causes of action that fail to state a claim upon which relief can be granted

The district court did not reach DLI's argument that the Carlsons' causes of action otherwise fail to state a claim upon which relief can be granted. However, we may affirm the district court's decision on other grounds. *See Cambern v. Hubbling*, 238 N.W.2d 622,

624 (Minn. 1976) ("If the trial court's rule is correct, it is not to be reversed solely because its stated reason was not correct.").

A party cannot prevail against a motion to dismiss by advancing "[l]egal conclusions masquerading as factual conclusions." *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 235 (Minn. 2008) (quotation omitted). Further, on appeal, a party must make more than "[a]n assignment of error on mere assertion, unsupported by argument or authority," or the argument "is forfeited and need not be considered unless prejudicial error is obvious on mere inspection." *Scheffler v. City of Anoka*, 890 N.W.2d 437, 451 (Minn. App. 2017), *review denied* (Minn. Apr. 26, 2017).

As DLI thoroughly argues, the Carlsons' claims of "malice," based on DLI bringing meritless cases with intentional misrepresentations, "duty to disclose," for DLI failing to gather evidence that they were not in violation of law, and "withheld evidence," for DLI failing to obtain a July 31, 2014 district court order, are not recognized causes of action. Further, it is not clear what relief the Carlsons seek based on them, aside from reversal of prior decisions by this court and the district court. It is not the role of this court to establish new causes of action. *Dukowitz v. Hannon Sec. Servs.*, 815 N.W.2d 848, 851 (Minn. App. 2012), *aff'd*, 841 N.W.2d 147 (Minn. 2014).

Even if we read the Carlsons' "malice" claim as a claim of malicious prosecution, it fails because they cannot prove the required element of the prior action terminating in their favor. *See Leiendecker v. Asian Women United of Minn.*, 895 N.W.2d 623, 634 (Minn. 2017) (describing elements of malicious prosecution). Likewise, even if we read their duty-to-disclose and withheld-evidence claims as claiming fraudulent

misrepresentation by omission, they have not alleged facts establishing DLI's duty to disclose, as that claim requires. *See Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 695, 698-99 (Minn. 2014) (requiring complaint to allege facts triggering duty to disclose).

Regarding their claims of negligence, based on DLI's investigation of the Cranes' affidavits and its conclusion that the Carlsons violated licensure requirements, IIED, "constitutional rights denied," and "fraud: theft" for DLI's "fraudulent judgment," the Carlsons do not provide more than legal conclusions in their complaint. They also do not assign error to the district court's dismissal of their IIED claim. Further, it is well established that an action to set aside a judgment based on fraud or perjury is not viable if the party knew of the alleged fraud or perjury during the earlier action and either failed to defend against it or did so unsuccessfully. *See Marcus v. Nat'l Council of Knights & Ladies of Sec.*, 159 N.W. 835, 836 (Minn. 1916) (holding statute authorizing action to set aside judgment obtained by fraud or perjury does not apply to issues "squarely made in a case so that each party knows what the other will attempt to prove"); *Clark v. Lee*, 59 N.W. 970, 970 (Minn. 1894) (refusing to set aside judgment based on fraud and perjury when appellant knew of "truth or falsity of the[] allegations" at commencement of challenged action). The district court's dismissal of the Carlsons' complaint therefore is proper based on res judicata and failure to state a claim upon which relief can be granted.

II. The district court properly dismissed the Carlsons' complaint with prejudice as to all parties.

The Carlsons argue that their complaint cannot be dismissed as to all parties because the Cranes did not join DLI's motion to dismiss, that their "complaint is viable" against DLI and the Cranes because the district court did not reach the merits of the complaint or rule on DLI's argument that they otherwise fail to state a claim, and that the district court failed to take the allegations in their complaint as true. We are not persuaded.

The Carlsons do not provide relevant legal authority to support their argument that their claims against the Cranes must survive. Generally, even a pro se party forfeits claims on which they do not provide relevant legal authority or legal argument. *See State v. Krosch*, 642 N.W.2d 713, 719 (Minn. 2002). We therefore deem this argument forfeited. But, even if we consider it, we are not persuaded. DLI addressed each of the Carlsons' claims, including those against the Cranes. The district court addressed this issue in its order and found that the Carlsons had notice that DLI would present arguments as to the dismissal of the claims against the Cranes. The record shows that the Carlsons had this notice. The district court properly dismissed the Carlsons' complaint with prejudice as to all parties.

Next, the Carlsons appear to argue that Minn. R. Civ. P. 12.02(e) required the district court to reach the merits of their complaint and DLI's failure-to-state-a-claim basis for dismissal. Minn. R. Civ. P. 12.02(e) does not require that the district court reach each of DLI's alternate grounds for dismissal. The Carlsons' complaint includes claims that either

res judicata bars or otherwise fails to state a claim upon which relief can be granted, and dismissal therefore is proper.

Finally, we do not view legal conclusions as facts when reviewing a motion to dismiss. *See Hebert*, 744 N.W.2d at 235. The district court properly construed the Carlsons' complaint and appropriately did not take their legal conclusions as facts.

III. The district court properly dismissed the Carlsons' outstanding motions as moot.

The Carlsons appear to argue that the district court "abused its discretion" by dismissing their outstanding motions because (1) it did not provide "written findings and reasons" and (2) the claims in the motions are not moot. Their claims lack merit.

An action "should be dismissed as moot when a decision on the merits is no longer necessary or an award of effective relief is no longer possible." *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015). A district court's judgment is final even when there is a pending appeal. *Brown-Wilbert*, 732 N.W.2d at 220.

Because the district court dismissed the Carlsons' underlying complaint, it did not rule on the merits of the Carlsons' motions that were premised on that complaint. The Carlsons cite to caselaw regarding the level of deference courts give to agency decisions and the "arbitrary and capricious" standard for agency decisions. They appear to rely on this caselaw to support their argument that the district court abused its discretion by not addressing their other motions, stating that "the district court's order in the instant case [is] without written findings and reasons, and therefore arbitrary and capricious." The Carlsons provide no authority that would require the district court to make findings on the merits of

their motions before dismissing them as moot, nor do they describe how the district court provided insufficient reasons for its determination that their motions are moot.

The Carlsons also cite to caselaw regarding the doctrine of mootness, but they do not apply it to this case or argue why their motions are not moot. Because the district court properly granted DLI's motion to dismiss the Carlsons' complaint in its entirety, it became "unable to grant relief" on the Carlsons' motions related to that complaint. *See Dean*, 868 N.W.2d at 4.

Finally, the Carlsons argue that the district court relied on "inadmissible" evidence, such as the prior cases. But a court may consider documents of public record when deciding a motion to dismiss. *See State v. Rewitzer*, 617 N.W.2d 407, 411 (Minn. 2000). The district court properly considered these materials.

Affirmed.