

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-1596**

Charlene Y. Latham,
Appellant,

vs.

Progressive Preferred Insurance Company, et al.,
Respondents.

**Filed July 26, 2021
Affirmed
Cochran, Judge**

Dakota County District Court
File No. 19HA-CV-20-646

Charlene Y. Latham, Addison, Texas (pro se appellant)

Jeffrey M. Markowitz, Steven J. Erffmeyer, Arthur, Chapman, Kettering, Smetak & Pikala,
P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Cochran, Presiding Judge; Ross, Judge; and
Frisch, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant-insured challenges the district court's grant of summary judgment to respondent-insurer and respondent-chief-executive-officer (CEO). Appellant argues that the district court erred by (1) declining to consider her second amended complaint when deciding respondents' summary-judgment motion, (2) granting summary judgment in

favor of respondent-insurer based on res judicata, and (3) granting summary judgment in favor of respondent-CEO based on the absence of evidence of personal participation in the injury-producing acts. We affirm.

FACTS

This case arises out of a car accident involving appellant Charlene Y. Latham that occurred on December 4, 2017. Due to injuries she sustained in the accident, Latham sought benefits from respondent Progressive Preferred Insurance Company under a no-fault policy. Pursuant to that policy, Progressive paid Latham several thousand dollars in medical-expense benefits and income-loss benefits over the course of several months.

In June 2018, a doctor conducted an independent medical examination of Latham at Progressive's request and concluded that Latham was no longer in need of any medical treatment for injuries resulting from the car accident. Progressive terminated Latham's medical-expense benefits. The parties thereafter corresponded for several months regarding whether Latham was entitled to further income-loss benefits. Latham ultimately agreed to settle with Progressive for \$3,500. As part of the settlement, Latham signed a release on January 2, 2019. Latham agreed to "release and forever discharge" Progressive and its principals, agents, and representatives from

any and all rights, claims, demands and damages of any kind, known or unknown, existing or arising in the future, resulting from or relating to any No-Fault benefits including but not limited to . . . wage, and/or income loss benefits . . . or medical expense benefits . . . arising out of certain person[al] injuries allegedly received by [Latham] in an automobile accident occurring on 12-04-17.

The Prior Court Action

In February 2019, Latham filed a petition for mandatory arbitration with the American Arbitration Association, seeking further benefits from Progressive under the same no-fault policy. In response, Progressive commenced a declaratory-judgment action in district court in July 2019 (“the prior court action”).¹ Progressive sought an order enforcing the settlement agreement and dismissing Latham’s arbitration petition. Latham answered the complaint and asserted several counterclaims. In her counterclaims, Latham alleged that Progressive had “refused to pay coverage that was approved for [w]age loss payments since February 2018” and acted in bad faith in violation of Minnesota’s Insurance Standard of Conduct statute, Minn. Stat. § 604.18 (2020). She further alleged that Progressive violated provisions of the Minnesota Unfair Claims Practices Act, Minn. Stat. §§ 72A.17-.32 (2020), by, for instance, refusing to acknowledge receipt of medical documentation, denying claims without good-faith reasons, inducing her to settle by cancelling her policy, and leading her to believe that the release she signed did not pertain to her claim for income-loss benefits. Latham requested that the district court order

¹ We note that the parties’ pleadings and the district court’s order in the prior court action are not in the record in this case. Generally, this court “may not consider matters not produced and received in evidence below.” *Thiele v. Stich*, 425 N.W.2d 580, 582-83 (Minn. 1988). But we have the inherent power to take judicial notice of public records “where the orderly administration of justice commends it.” *Eagan Econ. Dev. Auth. v. U-Haul Co. of Minn.*, 787 N.W.2d 523, 530 (Minn. 2010) (quotation omitted). And “[c]ourt records and files from prior adjudicative proceedings are an appropriate subject for judicial notice by the court.” *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174 (Minn. App. 1997) (discussing propriety of district court taking judicial notice of prior court file). Because the pleadings and the district court’s order in the prior court action are public records and their substance is essential for our resolution of this appeal, we take judicial notice of those documents without objection.

Progressive to pay her \$16,000 plus interest in income-loss benefits. The parties then filed motions to dismiss. Progressive also moved the court for an order enforcing the settlement agreement. And Latham subsequently filed a motion to exclude the action from the district court's expedited civil litigation track.

In February 2020, the district court issued an order granting Progressive's motion to enforce the settlement agreement. The court concluded that "[t]he release agreement is binding" because Latham "knowingly entered into the written release and accepted the \$3,500 settlement check." The court determined that Latham was "barred, by her own actions on January 2, 2019, from pursuing this matter further." After determining that the settlement agreement was enforceable, the district court denied Latham's motion to exclude the action from the expedited litigation process, concluding that the motion was moot. The district court later dismissed the action and judgment was entered.

The Present Action

Eleven days before the district court's ruling in the prior court action, Latham initiated the present action. In her complaint, Latham raised several of the same claims that she raised in the prior court action. Latham also asserted several new claims under the Minnesota Unfair Claims Practices Act, and she alleged that Progressive engaged in fraud by wrongfully inducing her to sign the release. Following Progressive's answer, Latham filed an amended complaint with leave of court. In her amended complaint, Latham added Progressive's CEO, respondent Susan Patricia Griffith, as a defendant. In total, the amended complaint raised 41 causes of action, including several new claims under the Minnesota Unfair Claims Practices Act and the Minnesota No-Fault Automobile Insurance

Act, Minn. Stat. §§ 65B.41-.71 (2020), as well as claims of negligent and intentional infliction of emotional distress. In the amended complaint, Latham did not seek income-loss benefits but rather sought over six million dollars in “compensatory, punitive, unliquidated & consequential damages.”

After answering the amended complaint, Progressive moved for summary judgment. Progressive requested that the district court dismiss the action in its entirety and dismiss Griffith as a party to the action. Progressive argued that the undisputed facts showed that (1) Latham had made insufficient service of process of the summons and complaint and (2) she had failed to state a claim upon which relief could be granted. Latham then filed a second amended complaint, this time without leave of court or respondents’ consent.

In October 2020, the district court granted Progressive’s motion for summary judgment. As an initial matter, the district court determined that Latham’s first amended complaint, not the second amended complaint, was the “controlling” complaint for purposes of deciding the motion for summary judgment. The district court did not consider the second amended complaint because Latham did not have the court’s permission or respondents’ consent to file her second amended complaint.

The district court further determined that no genuine issues of material fact existed because all of Latham’s claims in the present action were “based on *exactly* the same factual scenario” as in the prior court action and “[a]ll the facts supposedly at issue were fully and finally addressed in this Court’s Order” in the prior court action. The district court then determined that, even if Latham was “somehow able to show that there are

material facts at issue,” Progressive was entitled to judgment as a matter of law under the doctrine of res judicata. And the court concluded that Latham’s allegations against Griffith were also barred as a matter of law because there was no evidence to show that Griffith directed or participated in any of the alleged violations.

Latham appeals.

DECISION

Latham argues that the district court erred by granting summary judgment in favor of Progressive and Griffith and not granting summary judgment in her own favor. Summary judgment “is appropriate when there is no genuine issue of material fact and a party is entitled to judgment as a matter of law.” *Henson v. Uptown Drink, LLC*, 922 N.W.2d 185, 189-90 (Minn. 2019) (quotation omitted). Appellate courts review a grant of summary judgment de novo to determine if the district court properly applied the law and if genuine issues of material fact remain. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). “When conducting this review, [appellate courts] view the evidence in the light most favorable to the nonmoving party.” *Henson*, 922 N.W.2d at 190 (quotation omitted). A grant of summary judgment may be sustained on any grounds. *Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012).

Latham raises three specific arguments on appeal. She contends that the district court erred by (1) declining to consider her second amended complaint when deciding Progressive’s motion for summary judgment, (2) concluding that her claims against Progressive were barred by res judicata, and (3) concluding that her claims against Griffith were barred as a matter of law. We address each of these arguments in turn.

I. The district court did not err by declining to consider Latham’s second amended complaint.

Latham argues that the district court erred by concluding that her first amended complaint was controlling and by declining to consider her second amended complaint when deciding Progressive’s summary-judgment motion. Under the Minnesota Rules of Civil Procedure, once a responsive pleading has been served, a plaintiff “may amend a pleading *only* by leave of court or by written consent of the adverse party.” Minn. R. Civ. P. 15.01 (emphasis added). It is undisputed that Latham did not seek leave of court or obtain the consent of respondents to file her second amended complaint.

Latham argues that the district court nonetheless should have considered her second amended complaint because she “had no opportunity to fully develop her claims before the Court or seek leave to amend the Complaint” before Progressive filed its summary-judgment motion. Latham, however, provides no support for her contention that she was unable to fully develop her claims before Progressive filed its motion. Nor does she explain why she did not seek leave of court to file her second amended complaint. If Latham wished to have the district court consider further amendments to her complaint, she needed to again seek leave of court or obtain the written consent of the respondents. The district court properly declined to consider Latham’s second amended complaint.

II. The district court did not err by concluding that Latham’s claims against Progressive are barred by res judicata.

Latham next argues that the district court erred by applying res judicata to bar her claims against Progressive. She contends that none of the factors for applying the doctrine are met in this case. We disagree.

The application of res judicata is a question of law, which we review de novo. *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007) (*Brown-Wilbert III*). Once a dispute between parties has been adjudicated, “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 operates as an absolute bar to a subsequent claim when: (1) the prior claim involved the same factual circumstances; (2) the prior claim involved the same parties or their privies; (3) there was a final judgment on the merits; and (4) the party against whom res judicata is alleged had a full and fair opportunity to litigate the matter. *Brown-Wilbert III*, 732 N.W.2d at 220. “Res judicata applies equally to claims actually litigated and to claims that could have been litigated in the earlier action.” *Id.* With these standards in mind, we consider the res judicata factors in turn.

A. Same Factual Circumstances

Under the first res judicata factor, “[t]he common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions.” *Hauschildt*, 686 N.W.2d at 840-41 (quotation omitted). The first factor is met only if the right to assert the second claim arose at the same time as the right to assert the first claim. *Id.* at 841. Here, both the first and second actions arose out of Latham’s injuries in the December 2017 car accident, Latham’s subsequent objections to Progressive’s coverage decisions, and the resulting settlement agreement on January 2, 2019. The same evidence would sustain both actions, and Latham’s right to assert the

claims raised in the present action arose at the same time as those raised in the prior court action.

Latham argues that the factual circumstances of the two actions are not the same because “[n]ew facts were brought to light” after the prior court action. Latham appears to contend that these “new facts” relate to her alleged discovery that Progressive had “forged/fabricated” certain documents, including the settlement agreement, and that Griffith was personally involved in the purported legal violations.

Res judicata does not apply where new facts intervene prior to the second dispute that furnish a new basis for a party’s claims. *Federated Mut. Ins. Co. v. Litchfield Precision Components, Inc.*, 456 N.W.2d 434, 439 (Minn. 1990). But Latham has not identified, either in her filings to the district court or in her briefs on appeal, any specific “new facts” or evidence that she discovered following the prior court action. Accordingly, we agree with the district court’s conclusion that the claims in both actions involve the same factual circumstances. The first res judicata factor is met.

B. Same Parties or Privies

With respect to the second res judicata factor, Latham does not dispute that she and Progressive were both parties to the prior court action. Instead, she challenges the district court’s conclusion that Griffith is in privity with Progressive. Latham’s argument misses the mark because the district court applied res judicata only with respect to Latham’s claims against Progressive, not Griffith. The district court addressed Latham’s claims relating to Griffith separately, and we discuss those claims below. Because Latham and Progressive were both parties to the prior court action, the second res judicata factor is met.

C. *Final Judgment on the Merits*

Under the third res judicata factor, a final judgment is “one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 568 (Minn. App. 2017) (discussing the third factor in the context of collateral estoppel). Here, the district court’s order and judgment in the prior court action ended litigation regarding the enforceability of the settlement agreement, which fully disposed of the counterclaims.²

Latham contends that there was no final judgment on the merits in the prior court action because some of her claims in the present action “weren’t decided at all” in the prior court action. This argument is based on a misunderstanding of the third factor’s requirements. The third factor focuses on whether there was a final judgment on the merits *in the prior action*, not whether the prior action resolved all of the claims in the present action. *See Brown-Wilbert III*, 732 N.W.2d at 220-22 (analyzing whether there was final judgment on the merits in first action for purpose of applying res judicata).

Latham also argues that res judicata cannot be applied here based on this court’s decision in *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 715 N.W.2d 484 (Minn. App. 2006) (*Brown-Wilbert II*), *aff’d on other grounds*, 732 N.W.2d 209 (Minn. 2007). In that case, we concluded that a prior judgment was not final for the purpose of applying res

² We note that, in the prior court action, the district court entered judgment in the case approximately one year after its February 2020 order. Latham does not rely on the timing of the dismissal as a basis for her argument that the prior court action did not result in a final judgment on the merits. In any event, any error by the district court in ruling on res judicata before the delayed entry of judgment in the prior court action was harmless because judgment has now been entered.

judicata because the appellate process had not been exhausted. *Id.* at 488. The supreme court disagreed, however, holding that “for res judicata purposes, 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 III*, 732 N.W.2d at 221. Latham’s arguments are unavailing. The third res judicata factor is met.

D. Full and Fair Opportunity to Litigate the Matter

The fourth and final res judicata factor “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, 328 (Minn. 2001)). Significant procedural limitations exist, for instance, if the court in the first action lacked jurisdiction to hear the claims raised in the second action. *Wilson v. Comm’r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000).

Latham had a full and fair opportunity in the prior court action to litigate her claims. The district court was not prevented from hearing Latham’s claims based on any jurisdictional limitations. Latham had every incentive to litigate the matter and did so by raising several counterclaims. Furthermore, effective litigation was not limited by the nature or relationship of the parties.

Latham contends that, in the prior court action, the district court deprived her of a full and fair opportunity to litigate the matter when it denied her motion to exclude the case from the expedited litigation process. This decision by the district court did not amount to

a denial of a full and fair opportunity to litigate. “[A] litigant’s disagreement with a legal ruling does not necessarily mean that the court denied the litigant a full and fair opportunity to litigate a matter. . . . [I]f [the party] believed that the decision of the [court in the prior action] was erroneous, it had both the right and the opportunity to appeal.” *Joseph*, 636 N.W.2d at 329. Latham did not appeal from the judgment dismissing the prior court action. The fourth and final factor of res judicata is met.

In sum, all four res judicata factors are met. We therefore conclude that the district court properly granted summary judgment to Progressive on the basis that Latham’s claims against Progressive are barred by res judicata.

III. The district court did not err by concluding that Latham’s claims against Griffith are barred as a matter of law.

Latham next contends that the district court erred by concluding that her claims against Griffith fail as a matter of law. The district court determined that Griffith could not be held personally liable with respect to any of Latham’s claims because there is no record evidence of any direct contact between Griffith and Latham or any evidence that Griffith personally handled any portion of Latham’s benefits claims. We agree with the district court.

A corporate officer generally cannot be liable for the wrongful conduct of the corporation’s other officers, agents, or employees unless the officer personally participated in, directed, or negligently failed to learn of and prevent, the wrongful conduct. *Morgan v. Eaton’s Dude Ranch*, 239 N.W.2d 761, 762 (Minn. 1976). Here, Latham did not allege specific facts or provide any evidence to show that Griffith directed, participated

in, or knew or should have known of any wrongful conduct. Latham merely asserted that Griffith, as CEO of Progressive, “has been responsible, long-term in different departments across the company, for making the business operations decisions” and therefore should be held personally responsible for the actions of the corporation. And Latham further pointed to a “communication” she purportedly had with Griffith, which appears to consist of two emails Latham sent to Griffith concerning her claims dispute to which Griffith did not respond. These assertions focus on Griffith’s role as CEO, not any personal involvement by Griffith in managing Latham’s insurance claims. The district court properly concluded that Latham’s claims against Griffith are barred as a matter of law.

Affirmed.