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**STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1049**

Margaret J. Hanson,
Appellant,

vs.

Rochelle Gilliland, et al.,
Respondents.

**Filed May 27, 2008
Affirmed
Peterson, Judge**

Goodhue County District Court
File No. 25-CV-06-3234

Harvey N. Jones, P.A., 1350 South Frontage Road, Hastings, MN 55033 (for appellant)

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Considered and decided by Stoneburner, Presiding Judge; Peterson, Judge; and Wright, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this appeal from a summary judgment dismissing appellant's suit as barred by res judicata, appellant argues that the district court did not address whether material fact issues exist and erred in applying res judicata because appellant was not afforded an adequate opportunity to litigate her claims in the prior proceeding. We affirm.

FACTS

On May 23, 2005, Russel R. Mohr died in Goodhue County. He left a will that included a provision that granted appellant Margaret Hanson \$20,000 and Mohr's 1978 Ford Glass T-top two-door automobile. Formal probate proceedings were initiated, and appellant filed a written statement of claim seeking \$75,000 from the estate, alleging that she had been the decedent's unmarried partner for 18 years and had expended funds that increased the value of the estate. On October 28, 2005, a notice of disallowance of claim by the personal representative was served on appellant. The notice contained language that informed appellant that her claim would be barred unless she filed a petition for allowance or commenced a proceeding against the personal representative within two months after the mailing of the notice.¹ No petition for allowance was filed, and no proceeding against the personal representative was commenced.

On February 3, 2006, the personal representative filed a motion to confirm that appellant's claim was time-barred. On February 24, 2006, appellant filed a responsive motion and petitioned the court for an order directing the personal representative to pay her claim. Following a hearing, the district court issued an order denying appellant's claim. The district court found that appellant "failed to make a prima facie showing that her claim may be valid" and thus did not "overcome the procedural time bar."

¹ Minn. Stat. § 524.3-806(a) (2006) states, "Every claim which is disallowed in whole or in part by the personal representative is barred so far as not allowed unless the claimant files a petition for allowance in the court or commences a proceeding against the personal representative not later than two months after the mailing of the notice of disallowance or partial allowance if the notice warns the claimant of the impending bar."

Appellant then filed suit against respondent Rochelle Gilliland, who is the personal representative; respondents Frederick R. Mohr, Andrea Tomaska, and Lindsay Tomaska, who are the devisees under the will; and respondent Estate of Russell R. Mohr; alleging claims of quasi-contract, unjust enrichment, promissory estoppel, constructive trust/equitable mortgage, and conversion, and seeking damages in excess of \$85,000. Respondents asserted several affirmative defenses and moved for summary judgment. The district court found that appellant's claims were barred by res judicata and granted respondents summary judgment. This appeal followed.

DECISION

On appeal from summary judgment, this court asks whether there are any genuine issues of material fact and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). The application of the doctrine of res judicata to preclude a claim is a question of law subject to de novo review. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

“Res judicata is a finality doctrine that mandates that there be an end to litigation.”

Id.

Res judicata applies as an absolute bar to 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; [and] (4) the estopped party had a full and fair opportunity to litigate the matter.

Id. “Res judicata not only applies to all claims actually litigated, but to all claims that could have been litigated in the earlier action. *Id.* “The 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.” *McMenomy v. Ryden*, 276 Minn. 55, 58, 148 N.W.2d 804, 807 (1967).

Appellant concedes that the first three elements of res judicata are present here. The sole issue before us is whether appellant had a full and fair opportunity to litigate the matter.²

Whether a party had a full and fair opportunity to litigate a matter depends 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). “[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.” *Id.* at 329. A litigant who “is willing to gamble on the outcome of a lawsuit and sit silent when he has an opportunity to present evidence” or who foregoes the opportunity to appeal “should be bound by the result, whatever it may be.” *Id.* (quotation omitted).

² Appellant argues that the district court failed to consider whether there is any genuine issue of material fact. Appellant contends that because respondents challenged or denied 15 factual allegations in her complaint, “there are significant facts in dispute.” But because appellant has not shown that any of the disputed allegations is material to resolution of respondents’ defense of res judicata, her argument is without merit. *See Pischke v. Kellen*, 384 N.W.2d 201, 205 (Minn. App. 1986) (concluding that the existence of a factual dispute is only sufficient to preclude summary judgment when the fact is material); *see also Nw. Nat’l Cas. Co. v. Khosa, Inc.*, 520 N.W.2d 771, 773 (Minn. App. 1994) (stating that a fact is material when it will affect the result or outcome of the case).

Appellant filed a claim against the estate. When that claim was denied, appellant was informed that she had two months in which to petition the court for allowance of the claim or commence a proceeding against the personal representative. Appellant did neither and, instead, waited almost four months after her claim was denied before she (1) filed a motion responding to the personal representative's motion to confirm that appellant's claim was time-barred, and (2) petitioned for an order directing the personal representative to pay her claim.

Following a hearing on March 10, 2006, the district court denied appellant's claim. But the district court did not simply conclude that appellant's claim was time-barred because appellant did not act within two months after the notice was mailed. Citing *In re Estate of Hoppke*, 388 N.W.2d 754 (Minn. App. 1986), the district court determined that "[p]robate time limits are to be liberally construed in the interests of justice." In *Hoppke*, this court stated that "it is within the sound discretion of the probate court to reopen a decedent's estate and allow the filing of a late claim. This discretion should be exercised liberally in favor of the allowance of claims which are prima facie valid." 388 N.W.2d at 756 (citations omitted). After expressly recognizing the principle that probate time limits are to be liberally construed, the district court, in the exercise of its discretion, denied appellant's claim because appellant failed to make a prima facie showing that her claim may be valid. Appellant did not appeal this decision.

Appellant argues that she was denied the opportunity to litigate the merits of her claim because she was unable to testify or present witnesses at the March 10, 2006 hearing. But before appellant could litigate the merits of her underlying claim, she

needed to satisfy the procedural requirement of showing why she should be permitted to pursue her claim even though she had not petitioned the court for allowance of the claim or commenced a proceeding against the personal representative within two months after the claim was disallowed. When appellant failed to make a prima facie showing that her claim may be valid, this procedural requirement became a dispositive issue, and appellant's claim was denied. Litigation of a dispositive issue is sufficient for res judicata to apply to subsequent claims arising from the same factual circumstances. *See Joseph*, 636 N.W.2d at 328 (holding that declaratory-judgment action that ended in summary judgment entered against the claimant on the basis of the statute of limitations provided a full and fair opportunity to litigate); *Simington v. Minn. Veterans Home*, 464 N.W.2d 529, 530 (Minn. App. 1990) (“Summary judgment based on a statute of limitations is a decision on the merits and as res judicata, it bars relitigation of the same issue.”), *review denied* (Minn. March 15, 1991).

It is apparent from the district court's order issued after the March 10 hearing that appellant litigated the dispositive issue of whether her claim could go forward in light of the procedural bar created by her untimely filing. Furthermore, res judicata bars not only issues that were litigated, but also issues that could have been litigated in the earlier proceeding. *Wilson v. Comm'r of Revenue*, 619 N.W.2d 194, 198 (Minn. 2000). Appellant could have litigated the merits of her underlying claim if she had challenged the disallowance within the statutory period or if she had made a prima facie showing in the probate proceeding that her claim was valid. Appellant had a full and fair opportunity to do both. There was no significant procedural limitation in the probate proceeding,

appellant was aware of the probate proceeding and had the incentive to pursue her claim in the proceeding, and respondents did nothing that limited appellant's ability to participate in the probate proceeding.

Finally, appellant argues that res judicata should not be applied to her case because to do so would work an injustice. “[R]es judicata is an equitable doctrine that must be applied in light of the facts of each individual case. . . . [B]ecause res judicata is a flexible doctrine, the focus is on whether its application would work an injustice on the party against whom estoppel is urged.” *R.W. v. T.F.*, 528 N.W.2d 869, 872 n.3 (Minn. 1995). But appellant does not explain what injustice occurs as a result of applying res judicata. Appellant presented her claim during the probate of Mohr's estate, and when the claim was disallowed, appellant had an opportunity to challenge the disallowance by filing a petition for allowance or commencing a proceeding against the personal representative within two months after the disallowance. Appellant did neither. Appellant then had an opportunity to revive her claim by making a prima facie showing that her claim may be valid. When the district court ruled that appellant failed to make a prima facie showing, appellant did not appeal the ruling. In light of the multiple opportunities that appellant had to obtain a ruling on the merits of her claim during the proceeding to probate Mohr's estate, we are not persuaded that applying res judicata in this action works an injustice on appellant.

Affirmed.