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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0166**

Maria Olson, et al.,
Appellants,

vs.

Christenson Law Office, PLLC, et al.,
Respondents.

**Filed July 16, 2018
Affirmed
Florey, Judge**

Hennepin County District Court
File No. 27-CV-17-10460

Frederic W. Knaak, Wayne B. Holstad, Craig J. Beuning, Holstad and Knaak, P.L.L.C.,
St. Paul, Minnesota (for appellants)

Paul C. Peterson, William L. Davidson, João C.J.G. de Medeiros, Lind, Jensen, Sullivan &
Peterson, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Bjorkman, Presiding Judge; Larkin, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

FLOREY, Judge

Appellants challenge the district court's dismissal with prejudice of their malpractice claims as barred by res judicata. Appellants argue that res judicata is not applicable for procedural dismissals and that the current action is based on new evidence.

Because we determine that res judicata applies and that the district court did not abuse its discretion by dismissing appellants' claims, we affirm.

FACTS

In 2010, appellants Shannon Olson, Maria Olson, and SSO, LLC sold two properties (the properties) to James Scott Kent and MNSilverCare, Inc. (the buyers). The transaction was funded in part by financing from People's National Bank of Mora (the bank). In addition, the buyers signed promissory notes for the benefit of appellants. At closing, the parties signed a standby-creditors agreement that limited appellants' ability to sue the buyers under the promissory notes without the bank's consent. In 2012, the buyers purchased an adjacent property from appellants (Lot 2). That year, the buyers defaulted on the notes, and appellants sued the buyers in violation of the standby-creditors agreement. Appellants retained respondents Christenson Law Office, P.L.L.C. and attorney Daniel M. Eaton to represent them in the matter. Defendant Eaton did not inform appellants that filing suit against the buyers would violate the standby-creditors agreement and expose them to liability. The court enforced the standby-creditors agreement and dismissed appellants' claims on the notes.

Meanwhile, the City of Cambridge sued appellants and the buyers, alleging that appellants failed to properly plat Lot 2 in conjunction with the development of the properties. Because of the error, the properties were inaccessible without imposing a conveyance of Lot 2. Respondents did not conduct a title search on the properties on behalf of appellants prior to the sale or during the ensuing litigation regarding the plat issues. The parties stipulated to a dismissal with the city and commenced an independent suit between

each other. The buyers sought reformation of the deed, cancellation of certificate of title, and issuance of new certificate of title for Lot 2. The bank filed a fraud claim against appellants, alleging that appellants misrepresented that Lot 2 was part of the original purchase of the property. The parties ultimately settled before going to trial on March 25, 2015. The terms of the settlement agreement further restricted appellants' ability to sue the buyers for defaulting on the notes. The settlement agreement also prevented appellants from suing the bank or any of its agents or attorneys for events arising before the settlement agreement.

In April 2015, appellant Maria Olson brought a pro se claim against Dwight McKinnis, an attorney who had previously represented both her and the bank. Olson alleged that McKinnis simultaneously represented her and the bank during the time the bank attempted to collect on its loan to the buyer. In August 2015, the district court determined that Olson violated the settlement agreement by suing McKinnis, because McKinnis was the bank's attorney, and Olson had agreed not to sue any agent or attorney of the bank for prior actions. In October 2015, appellants were notified by the Office of Lawyer's Professional Responsibility (OLPR) that McKinnis was under investigation for misconduct. According to the information provided by the OLPR, the bank was aware of the plat issues with Lot 2 at all stages of the prior dispute, and the bank was able to use that information during the settlement process to its advantage. Appellants then moved to vacate the settlement agreement and argued that the bank committed fraud and made false statements concerning the existence of easements over Lot 2. Olson argued that, had she known of the bank's prior awareness of the plat issues, she would not have settled. In a

December 2015 order, the district court denied her motion to vacate the settlement agreement and found that Olson did not exercise her own due diligence in uncovering the newly discovered evidence sooner and that she did not rely on the alleged misrepresentations made by the bank.

Beginning in February 2015, appellants ceased making payments to their attorneys, respondents.¹ In April 2015, respondents withdrew from representation, shortly after negotiating the settlement agreement between appellants and the bank. Soon after, respondents sued for breach of contract for unpaid legal bills. Appellants filed pro-se counterclaims for malpractice and breach of fiduciary duty in June 2015. Both parties moved for summary judgment. The district court held a summary-judgment hearing on November 4, 2015. Although appellants obtained new information from the OLPR regarding the bank's knowledge of the plat issues and respondents' failure to uncover the same issues in October 2015, appellants did not address those facts as part of its summary-judgment briefing or at the summary-judgment hearing. The district court granted summary judgment to respondents on their breach-of-contract claim for unpaid legal bills. The court found that appellants did not provide an expert affidavit to support their claim for legal malpractice as required by statute,² and it dismissed appellants' claims. Appellants did not file a direct appeal.

¹ Appellants also ceased making payments in 2014, and the parties created a payment plan.

² Appellants' claim for breach of fiduciary duty was premised on their claim for legal malpractice, so it also failed for not satisfying the statutory expert-affidavit requirement.

On July 10, 2017, appellants sued respondents for legal malpractice and breach of fiduciary duty, now with the assistance of counsel. Appellants alleged that respondents' failure to run a title search materially prejudiced their ability to negotiate with the bank and led to a disadvantageous settlement agreement. Appellants claimed they possessed new facts and that their claims arose after the prior counterclaims for malpractice and breach of fiduciary duty. Appellants also claimed that they could not have brought their arguments in the prior action for legal malpractice, because the prior litigation against McKinnis and the validity of the settlement agreement was not yet final. They reasoned that the proceeding determining the validity of the settlement agreement was pending direct appeal, and because the settlement agreement was the sole source of damages for its malpractice claim, its malpractice claim was not yet ripe at the time of the prior action. The district court determined that the doctrine of res judicata barred appellants' claims because the facts alleged by appellants were not new and were known during the prior proceeding, and the malpractice claim arose before appellants' prior counterclaims, not after the counterclaims as appellants suggest.

This appeal follows.

D E C I S I O N

I. Res judicata applies to appellants' claims.

The decision of a district court to grant a motion to dismiss under Rule 12.02(e) is subject to de novo review. *Hebert v. City of Fifty Lakes*, 744 N.W.2d 226, 229 (Minn. 2008). The question of whether the elements of res judicata are met is a question of law and is also reviewed de novo. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn.

2004). If the elements of res judicata are present, this court reviews the district court's decision to apply the doctrine for an abuse of discretion. *Dixon v. Depositors Ins. Co.*, 619 N.W.2d 752, 755 (Minn. App. 2000).

The doctrine of res judicata seeks to avoid wasteful litigation so “that a party may not be twice vexed for the same cause.” *Breaker v. Bemidji State University*, 899 N.W.2d 515, 518-19 (Minn. App. 2017) (quotation omitted). Res judicata bars a subsequent claim if: (1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties;³ (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). Res judicata applies to claims actually litigated and to claims that could have been litigated in the prior action. *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). Res judicata should not be rigidly applied. *Hauschildt*, 686 N.W.2d at 837. Instead, the court should consider whether applying the doctrine against a party would work an injustice. *Id.* Here, it is not disputed that both claims involved the same parties. We address the remaining res judicata elements in turn.

A. Appellants' claims arise from the same set of factual circumstances.

Under the first prong of res judicata, a claim is barred if it arises from the same set of factual circumstances. *Id.* at 840. The rule is designed to prevent parties from pursuing

³ It is not disputed that both claims involved the same parties.

a different legal theory under the same factual circumstances. *See Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978) (“[A] plaintiff may not split his cause of action and bring successive suits involving the same set of factual circumstances.”). 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.” *Hauschildt*, 686 N.W.2d at 840-41 (quoting *McMenomy v. Ryden*, 276 Minn. 55, 58, 148 N.W.2d 804, 807 (1967)). In a claim for legal malpractice, a plaintiff must allege: (1) the existence of an attorney-client relationship; (2) acts constituting negligence or breach of contract; (3) that such acts were the proximate cause of appellants’ damages; and (4) but for the attorney’s conduct, appellants would have obtained a more favorable result in the underlying transaction than the result obtained. *Jerry’s Enterprises, Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 819 (Minn. 2006).

Appellants argue that this action involves a different set of factual circumstances because arguments relating to the evidence uncovered by the OLPR were not considered by the district court. Appellants’ argument fails. Appellants’ two claims are “alternative theories of recovery” arising from the same factual circumstances. *Hauschildt*, 686 N.W.2d at 840-41. Respondents’ representation of appellants in their lawsuits against the buyers and the bank formed one factual circumstance. Appellants could have alleged both claims in the prior action because facts existed at the time of the prior action to allege both claims. Although appellants had not discovered evidence of respondents’ failure to run a title search at the time they asserted their counterclaims, appellants obtained that evidence before the summary-judgment hearing and before the final judgment. Appellants could

have raised the issue of respondents' failure to run a title search, but they did not. The first prong of res judicata is met, because both claims of legal malpractice arose from the same factual circumstances.

B. There was a final judgment on the merits.

A dismissal with prejudice is a final judgment on the merits. Minn. R. Civ. P. 41.02(c). A judgment "can form the basis for res judicata" even when it "is disposed of on nonsubstantive grounds." *Johnson v. Hunter*, 447 N.W.2d 871, 873 (Minn. 1989). In a legal-malpractice action, the complaint must be accompanied by an expert affidavit or it will be dismissed with prejudice. Minn. Stat. § 544.42, subd. 6(b) (2016). In the prior action, the district court dismissed appellants' claims for failure to provide such an expert affidavit. That judgment was final on the merits.

Appellants argue that there was not a final judgment on the merits because a procedural dismissal is not on the merits. Appellants rely on inapposite and stale caselaw, and their arguments fail. Statute and caselaw hold that a procedural dismissal forms the basis for res judicata. *See id.*; *Johnson*, 447 N.W.2d at 873. Appellants' argument fails. There was a final judgment on the merits.

C. Appellants had a full and fair opportunity to litigate their prior claim.

The question of whether a party had a full and fair opportunity to litigate a matter generally addresses 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).

Appellants argue they were not able to fully litigate their prior claim because they were not able to present their claim regarding respondents' failure to run a title search. Appellants claim that the litigation regarding the validity of the settlement agreement had yet to be adjudicated because the final appeal had not been resolved and that the lack of finality prevented them from presenting the argument in the prior action. A judgment becomes final for the purposes of res judicata when it is entered in the district court and remains final until it is reversed or otherwise modified by a subsequent appeal. *Brown-Wilbert, Inc.*, 732 N.W.2d at 221. This is true even if an appeal is pending at the time a subsequent claim is barred by res judicata. *Id.* Appellants reason that their malpractice claim could not be litigated because it was premised on whether the settlement agreement remained valid, and the issue of whether the settlement agreement was valid was as yet undetermined. However, the district court entered a judgment relating to that litigation, which became final when it was entered. *Id.* It remained final even though appellants filed a direct appeal. *Id.* No procedural limitation prevented appellants from litigating their claims. *See Joseph*, 636 N.W.2d at 328.

Appellants next argue that their claim had not accrued because they did not discover evidence of respondents' malpractice and breach of fiduciary duty at the time of the prior action. Appellants cite *Antone* in support of their argument. 720 N.W.2d at 335. *Antone* is inapposite and addresses the question of when a claim for legal malpractice accrues and when the statute of limitations begins to run. *Id.* at 335-37. It does not apply claim-accrual analysis to the doctrine of res judicata, and we will not extend *Antone* beyond the context of statutes of limitation.

Irrespective of appellants' citation to inapposite authority, appellants' argument fails. Appellants were aware that respondents failed to run a title search in October 2015. The summary-judgment hearing for the prior action occurred in November 2015. Appellants could have presented the issue by amending their response, amending their motion for partial summary judgment, or, at the very least, presenting the new evidence at the summary-judgment hearing. Appellants chose not to address the issue. The record does not indicate that appellants experienced procedural obstacles or disincentives to fully litigate the issue. *See Joseph*, 636 N.W.2d at 328. Appellants had a full and fair opportunity to litigate their claim.

II. The district court did not abuse its discretion by applying the doctrine of res judicata to bar appellants' claims.

Res judicata is not rigidly applied. *Hauschildt*, 686 N.W.2d at 837. If the doctrine fits a set of facts, the decision to apply the doctrine is reviewed for an abuse of discretion. *Erickson v. Comm'r of Dep't of Human Servs.*, 494 N.W.2d 58, 61 (Minn. App. 1992). The question of whether to apply res judicata to a given set of facts hinges upon whether its "application would contravene an overriding public policy." *Id.*

Appellants should have brought every claim and theory for legal malpractice they had against respondents at the time of the prior action. That they were pro se litigants in the prior action does not change the analysis, because pro se litigants are held to the same standard as attorneys. *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001). Not only did the claims exist at the time of the prior action, but appellant knew about the claims at the time of the prior action. Appellants failed to bring them. The district court's

application of the doctrine of res judicata in this case to preclude appellants from litigating the same facts under a different legal theory comports with the “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). The district court did not abuse its discretion by applying the doctrine of res judicata to bar appellants’ claims.

Affirmed.