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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0559**

Jeffrey James Nathe,
Appellant,

vs.

Kevin Lee Thompson,
Respondent.

**Filed December 16, 2019
Reversed and remanded
Hooten, Judge**

Hennepin County District Court
File No. 27-CV-18-18957

Michael B. Padden, Padden Law Firm, PLLC, Lake Elmo, Minnesota (for appellant)

Steven P. Pope, David M. Werwie & Associates, St. Paul, Minnesota (for respondent)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and
Kalitowski, Judge.*

UNPUBLISHED OPINION

HOOTEN, Judge

Appellant challenges the district court's dismissal of his personal injury claim
against respondent, his former roommate and landlord, based on res judicata and collateral

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

estoppel grounds. Appellant argues that the district court erred when it held that a claim for “wrongful eviction” following the termination of a lease agreement presented in conciliation court involved the same cause of action and issues as appellant’s action for personal injury before the district court and that appellant’s personal injury claim was barred under principles of res judicata and collateral estoppel. We agree and reverse the district court’s dismissal for res judicata and collateral estoppel and remand for further proceedings.

FACTS

This appeal arises from the district court’s order granting a motion to dismiss a personal injury claim on the grounds of res judicata and collateral estoppel. The personal injury claim was based on an incident between appellant Jeffrey James Nathe and Tango, a dog owned by respondent, Kevin Lee Thompson.

In his complaint, Nathe states that in January 2017, he rented a room from Thompson in Thompson’s Minnetonka home. On October 4 of that year, Tango and Nathe’s dog got into a fight. When Nathe attempted to break up the fight, Tango bit Nathe’s hand. Nathe immediately sought medical attention for the bite and filed a police report the next day. On the evening of October 5, Nathe and Thompson’s girlfriend got into an argument about the dog bite that quickly escalated into Thompson locking Nathe out of the house and Nathe calling the police. The men continued to argue throughout the evening and the police eventually removed Nathe from the property for allegedly threatening Thompson’s life. On October 6, when Nathe returned, Thompson locked all

the doors to the house and obtained an order for protection from the district court. Thompson later changed all of the locks on the house.

On October 19, 2017, Nathe filed a pro se complaint in conciliation court to recover \$2,570 in expenses from Thompson, claiming that Thompson violated the lease agreement by “wrongfully evicting” him when Thompson locked Nathe out of the home. The conciliation court complaint noted that the “wrongful eviction” occurred after Tango bit Nathe’s hand. The expenses presented at conciliation court were not itemized. The referee ruled against Nathe on the “wrongful eviction” claim and gave Nathe until January 19, 2018 to remove the claim to district court. Nathe failed to do so.

On October 27, 2018, Nathe filed a complaint in district court against Thompson for past and future medical bills, wage loss, pain, suffering, and emotional distress from Tango’s bite. Thompson filed a motion to dismiss, claiming that Nathe’s claims were barred under principles of res judicata and collateral estoppel because such claims had been previously dismissed in conciliation court. In response, Nathe filed an affidavit in which he itemized the \$2,570 that he claimed in conciliation court relating to his “wrongful eviction,” asserting that the amount was the total of \$1,800 for three months of rent, \$475 for moving and storage costs, \$170 for filing fees and costs associated with the order for protection, and \$125 for spoiled food. The affidavit stated that Nathe did not seek reimbursement for any medical bills or pain and suffering associated with the dog bite in conciliation court and mentioned Tango only to provide context for his subsequent “wrongful eviction.” The district court dismissed the claim on the grounds that the evidence and underlying facts submitted to the conciliation court on the “wrongful

eviction” claim were identical to those submitted to the district court as part of the dog bite claim and thus was barred.

This appeal follows.

D E C I S I O N

Nathe argues that the district court erred when it granted Thompson’s motion to dismiss for res judicata and collateral estoppel because: (1) the claim before the district court did not involve the same cause of action as the one litigated in conciliation court; (2) the issue presented to the district court was not identical to the issue presented earlier in conciliation court; and (3) Nathe did not have a full and fair opportunity to litigate the dog bite claim in the earlier proceeding. We agree.

In reviewing the district court’s decision to grant a motion to dismiss under Minn. R. Civ. P. 12.02(e), our task is to determine the legal sufficiency of the claims for relief, and the applicable standard of review is de novo. *Bodah v. Lakeville Motor Express, Inc.*, 663 N.W.2d 550, 553 (Minn. 2003). To do so, we consider “only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Id.*

I. Nathe’s personal injury claim is not barred by res judicata.

Fundamental to the doctrine of res judicata is that a “right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction cannot be disputed in a subsequent suit between the same parties.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004) (quotation omitted). Res judicata is an absolute bar to litigating 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.” *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011). “All four prongs must be met for res judicata to apply.” *Hauschildt*, 686 N.W.2d at 840.

Res judicata applies not only to claims actually litigated, but also 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) (emphasis added). However, the doctrine is not to be rigidly applied and a court must determine if its application would work an injustice against the party to whom the doctrine is applied. *Johnson v. Consol. Freightways, Inc.*, 420 N.W.2d 608, 613–14 (Minn. 1988). For the finality effect of res judicata to apply, a party must “assert all alternative theories of recovery in the initial action.” *Hauschildt*, 686 N.W.2d at 840 (quotation omitted). This court reviews the application of res judicata de novo. *Brown-Wilbert*, 732 N.W.2d at 220. Nathe only argues that the first and fourth elements of res judicata are at issue here; we examine them in turn.

The first element of res judicata is that the earlier claim involved the same set of factual circumstances as the later claim. *Hauschildt*, 686 N.W.2d at 840. Two claims involve the same set of factual circumstances when the same evidence will sustain both actions. *McMenomy v. Ryden*, 148 N.W.2d 804, 807 (Minn. 1967). Yet the same subject matter alone does not establish that two claims are the same cause of action when “the right to assert the second claim did not arise *at the same time* as the right to assert the first claim.” *Care Institute, Inc.-Roseville v. County of Ramsey*, 612 N.W.2d 443, 447 (Minn. 2000) (emphasis added).

Nathe argues that his personal injury claim and his “wrongful eviction” claim do not arise out of the same set of factual circumstances and therefore the first element of res judicata is not met. Thompson responds that the dog bite and the “wrongful eviction” are intricately connected and therefore arise from the same operative facts.

In *Mattsen v. Packman*, the supreme court recognized that when a party brings a property damage claim before the conciliation court, that party must also bring any personal injury claims that arise from the same factual circumstances as the property damage claim. 358 N.W.2d 48, 49 (Minn. 1984). Although a conciliation court’s damage cap may disincentivize personal injury claims, the supreme court stated that when the two claims vest simultaneously and are intricately connected, such as a car accident, res judicata controls. *Id.* at 49–50. However, in *Care Institute, Inc.-Roseville*, the supreme court noted that “if the right to assert the second claim did not arise at the same time as the right to assert the first claim, then the claims cannot be considered the same cause of action.” 612 N.W.2d at 447 (finding res judicata does not apply to two cases that involve the same subject matter and type of cause of action but that are not the same cause of action).

The catalytic effect of Tango’s bite on instigating a fight between the two men, a fight that escalated into the alleged “wrongful eviction,” does not support the assertion that the two claims are the same. Nathe’s right to assert a claim for a personal injury from the dog bite vested when he was bitten on October 4, 2017. Nathe’s right to assert a claim for “wrongful eviction” vested when he was locked out of the property on October 5, 2017. Despite the reference to the dog bite on Nathe’s conciliation court complaint, the right to sue for the two claims vested at different times.

The claims also are based on different factual circumstances. The facts supporting the personal injury claim are Tango's bite and Nathe's subsequent medical treatments and bills. The facts supporting the "wrongful eviction" claim involve the dog bite, but are also based on various other arguments the men had over the following days. And although Nathe attached a single emergency room record to the conciliation court complaint, that evidence would not independently support Nathe's personal injury claim as Nathe neither presented evidence of, nor requested, any damages or medical expenses associated with the bite.

Accordingly, we find that as the two claims did not vest at the same time and are not based on the same factual circumstances, they are not part of "a single, indivisible claim or cause of action" so as to meet the first element of res judicata. *Mattsen*, 358 N.W.2d at 50.

The fourth element of res judicata is that the party against whom res judicata is applied had a full and fair opportunity to litigate the matter in the prior proceeding. *Hauschildt*, 686 N.W.2d at 840. When we seek to answer this question, the inquiry 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).

Nathe argues that because he was pro se and relied on advice given to him by the referee, as well as independent research into the monetary limitations of conciliation court, he did not have a full and fair opportunity to litigate the personal injury claim in the first

proceeding. Nathe also contends that because he filed his conciliation court complaint only 15 days after the injury, it would be impossible for him to realize the full extent of his injury so as to adequately incentivize him to pursue a personal injury claim. Thompson responds by arguing that Nathe had an incentive to litigate the issue and the litigation was not limited by the nature or relationship between the parties.

The conciliation court's proceeding was not unfair simply because Nathe was pro se. *See, e.g., Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001) (noting that some accommodations may be made for pro se litigants, but this court generally holds pro se litigants to the same standard as attorneys and they must comply with court rules). However, as the lasting impacts of Tango's bite may not have appeared at the time of conciliation court, and it is unclear from the record if his damages exceeded the monetary limits applied in conciliation court, we are reluctant to decide if the district court erred in finding that Nathe had a full and fair opportunity to litigate Tango's bite in conciliation court. Nevertheless, because we hold that the dog bite claim and the "wrongful eviction" claim arise from different factual circumstances, we need not decide whether Nathe had the incentive to litigate the issue fully.

For a court to find that res judicata applies, all four elements must be met. *Hauschildt*, 686 N.W.2d at 840. As Nathe's personal injury claim and his "wrongful eviction" claim vested at different times and did not arise out of the same set of factual circumstances, we hold that Nathe's personal injury claim is not barred by res judicata.

II. Nathe's personal injury claim is not barred by collateral estoppel.

The district court also concluded that Nathe's personal injury claim was barred by collateral estoppel. Collateral estoppel is similar to res judicata, but applies to issues, rather than claims, that have already been litigated. *Hauschildt*, 686 N.W.2d at 837. Collateral estoppel bars further action when four elements are met: (1) the issue subsequently litigated was identical to the one in a prior adjudication; (2) there was a final judgment on the merits; (3) the estopped party was a party or in privity with a party to the prior adjudication; and (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue. *Id.* "The issue must have been distinctly contested and directly determined in the earlier adjudication for collateral estoppel to apply." *Id.* at 837–38. Whether collateral estoppel applies is a mixed question of law and fact that we review de novo. *Id.* at 837. Nathe only argues that the first and fourth elements of collateral estoppel are at issue here; we examine them in turn.

Turning to the first element, "[t]he issue on which collateral estoppel is to be applied must be the same as that adjudicated in the prior action and it must have been necessary and essential to the resulting judgment in that action." *Hauschildt*, 686 N.W.2d at 837. "The party asserting collateral estoppel has the burden to establish that the issue was actually presented and necessarily determined in the earlier action." *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 927 (Minn. 2015) (quotation omitted).

Nathe argues that the issue presented in the personal injury claim is not identical to the issue presented in the "wrongful eviction" claim because the evidence necessary to sustain a dog bite claim is different than the evidence Nathe presented in conciliation court

to support his “wrongful eviction” claim. Although no transcript of the conciliation action exists to support this assertion, Nathe provided a sworn affidavit stating that the damages claimed in his conciliation court action did not include the damages claimed in his personal injury action. In response, Thompson contends that the issue of the dog bite actually was presented and determined before the conciliation court because there is a reference to Tango in the complaint and a portion of Nathe’s emergency room medical record was attached.

Thompson asks us to presume that the dog bite claim was litigated even though the record is silent on whether Nathe sought compensation for this claim under Minnesota’s dog bite statute and the referee’s final judgment does not indicate what issues were actually raised during the proceeding. As collateral estoppel is an affirmative defense, Minn. R. Civ. P. 8.03, and Thompson has the burden to prove this issue was actually litigated, we conclude that he has not presented sufficient evidence to overcome this threshold.

Turning to the fourth element of collateral estoppel, Nathe argues that his pro se status made it impossible for him to know the extent of his injury at the time of conciliation court and therefore he did not have an incentive to fully litigate the issue. Yet again, as the lasting impacts of Tango’s bite may not have appeared at the time of conciliation court, and it is unclear from the record if his damages exceeded the monetary limits applied in conciliation court, we are reluctant to decide if the district court erred in finding that Nathe had a full and fair opportunity to litigate Tango’s bite in conciliation court. Nevertheless, because we hold that Thompson has not presented sufficient evidence to prove that the dog

bite was actually litigated at conciliation court, we need not decide whether Nathe had the incentive to fully litigate the issue.

As Thompson failed to present sufficient evidence to indicate that the issue of Nathe's personal injuries arising from the dog bite was actually litigated during the conciliation court's proceeding, and all four elements of collateral estoppel must be met, we hold that Nathe is not barred by collateral estoppel from pursuing his claim in district court.

Reversed and remanded.