

*This opinion is nonprecedential except as provided by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
A20-1063**

Christopher Gary Baylor,
Appellant,

vs.

Johnson & Greenberg, PLLP, et al.,
Respondents.

**Filed April 5, 2021
Affirmed
Smith, John, Judge ***

Hennepin County District Court
File No. 27-CV-20-4935

Christopher G. Baylor, Springfield, Pennsylvania (pro se appellant)

Steven J. Sheridan, Olivia A. Moe, Stephen F. Buterin, Fisher Bren & Sheridan LLP,
Minneapolis, Minnesota (for respondent)

Considered and decided by Florey, Presiding Judge; Frisch, Judge; and Smith, John,
Judge.

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

NONPRECEDENTIAL OPINION

SMITH, JOHN, Judge

We affirm the district court's dismissal of appellant Christopher Gary Baylor's malpractice claims against respondents Johnson & Greenberg, PLLP; Lee R. Johnson; and Jill D. Greenburg, because the district court correctly concluded that appellant's claims were barred by res judicata.

FACTS

Appellant hired respondent Lee Johnson of respondent law firm Johnson & Greenberg to represent him in connection with a petition for an order for protection (OFP) against appellant filed by appellant's then-wife, E. Following a hearing, the district court determined that appellant had committed domestic abuse against E. and their child. The district court issued an OFP granting E. sole-legal and sole-physical custody of the child, limiting appellant's contact with E., limiting his parenting time, ordering him to pay child support, and requiring him to receive counseling before having contact with the child.

Appellant brought an action in federal district court (the federal action) against respondent Johnson, claiming ineffective assistance of counsel.¹ The magistrate judge, after noting that appellant's claim was actually legal malpractice because there is no right to effective assistance of counsel in a civil case, issued a report. The report set out the four elements of legal malpractice: (1) an attorney-client relationship; (2) acts of the defendant constituting negligence or breach of contract; (3) that such acts are the proximate cause of

¹ The federal action also involved claims against several other defendants, none of which is relevant to this appeal.

the plaintiff's damages; and (4) that, but for the defendant's conduct, the plaintiff would have been successful in the action. *Blue Water Corp. v. O'Toole*, 336 N.W.2d 279, 281 (Minn. 1983). The magistrate concluded that "[Appellant] has not alleged any acts constituting negligence or breach of contract, any facts that would suggest causation of damages, or any facts that would support a reasonable inference that [appellant] would have succeeded in the state court proceedings, absent [respondents'] conduct"; and recommended that "the claim against [respondents] be dismissed." A federal district court judge adopted the recommendation and dismissed the claim with prejudice on August 1, 2019.

Appellant subsequently brought this action against respondents Johnson, Greenberg, and their law firm, claiming: (1) professional negligence and malpractice; (2) breach of an attorney-client retainer agreement; (3) breach of duty; and (4) conversion, or failure to present certain evidence, in the OFP matter. Respondents moved to dismiss for failure to state a claim on which relief could be granted. Following a Zoom hearing, the district court granted respondents' motion to dismiss on the ground of res judicata. Appellant challenges the dismissal, arguing that res judicata does not apply.

DECISION

The application of res judicata is a question of law that an appellate court reviews de novo. *Brown-Wilbert Inc., v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007). Res judicata requires that: (1) the prior claim involved the same factual circumstances; (2) it involved the same parties or their privities; (3) there was a final judgment on the merits; and (4) the party against whom it is alleged had a full and fair

opportunity to litigate the matter. *Id.* Because appellant argues in his brief only that he did not have a full and fair opportunity to litigate this matter in the federal action, he has waived (forfeited) his right to challenge satisfaction of the first three elements. *See Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (Minn. 2006) (“[F]ailure to address an issue in [a] brief constitutes waiver of that issue.”); *see also State v. Tomassoni* 778 N.W.2d 327, 334 (Minn. 2010) (noting that an appellate court does not address pro se unsupported claims on appeal).

Whether a party had a full and fair opportunity to litigate a matter is an objective, not a subjective, test. *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (concluding that party opposing res judicata “had a full and fair opportunity to litigate the coverage defense in the . . . declaratory judgment proceeding”).

The question of whether a party had a full and fair opportunity to litigate a matter generally 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. The record here indicates that there were no significant procedural limitations placed on [the party opposing res judicata] in the . . . declaratory judgment proceeding, that [the] party had every incentive to litigate the matter, and effective litigation was not limited by the nature or relationship of the parties.

Moreover, 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. Here, if [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. For reasons known only to [itself], it chose not to appeal. Had it successfully appealed, it would not be in the position it finds itself in now. . . . When a litigant is willing to gamble on the outcome of a lawsuit and sit[s] silent when he has an opportunity to present evidence, he should be bound by the result, whatever it may be. . . . [T]he same may be said when a

litigant sits silent on the opportunity to appeal. Thus, we conclude that the fourth requirement for the application of res judicata has been met.

Id. at 328-29 (quotation and citations omitted).

Appellant brought the federal action against parties he chose, asserted the claims he chose, made the arguments he chose, chose to proceed pro se rather than with an attorney, and chose not to appeal. He now argues on appeal that he did not have a full and fair opportunity to litigate this matter because “[the district court] . . . failed to recognize [his] argument.” The argument demonstrates that appellant does not understand that the issue for res judicata was whether he had the opportunity to litigate in the federal action, not in the subsequent district court action.

The district court correctly concluded that appellant:

has already litigated his claims arising out of [respondents’] representation and provision of legal services to him in the OFP [m]atter. Since [he] does not allege that this action arises out of any new or different facts other than [respondents’] legal representation of him in the OFP [m]atter, and the [f]ederal [a]ction has been dismissed pursuant to the [federal district court judge’s] order entered on August 1, 2019, this claim is barred by the doctrine of res judicata.

There was no error in the district court’s analysis.

Affirmed.