

*This opinion is nonprecedential except as provided by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
A21-0706**

In re the Estate of:

Robert J. Hansen, Deceased.

**Filed January 10, 2022
Affirmed
Cochran, Judge**

Ramsey County District Court
File No. 62-PR-10-179

James T. Smith, Richard Huffman, Huffman, Usem, Crawford, Greenberg & Smith, P.A.,
Minneapolis, Minnesota (for appellants Jill Hansen and Leif Layman)

Julian C. Zebot, Peter C. Hennigan, Maslon LLP, Minneapolis, Minnesota (for respondents
U.S. Bank National Association and Barbara Pagel)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and
Halbrooks, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

This appeal arises from a lawsuit brought by appellants against respondent U.S.
Bank National Association (U.S. Bank) in its capacity as co-special administrator and
co-personal representative of the estate of decedent Robert J. Hansen. Appellants

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

challenge the district court's dismissal of their breach-of-fiduciary-duty claims against U.S. Bank. We affirm.

FACTS

Appellants Jill Hansen and Leif Layman—Robert Hansen's daughter and grandson, respectively—are two of the beneficiaries of Robert's probate estate.¹ In the decade since Robert's death, Hansen and Layman have brought multiple challenges to U.S. Bank's management of the estate in its capacity as co-special administrator and co-personal representative. U.S. Bank's co-special administrator and co-personal representative, respondent Barbara Pagel, was not named as a party to the current lawsuit but later joined U.S. Bank's motion to dismiss. The following summarizes the facts and lengthy procedural history most relevant to this appeal.

In August 2009, Robert and his brother, Bryan Hansen, entered into an agreement to sell real property they owned in the city of Vadnais Heights. The buyer intended to build a sports complex on the property, financed through tax-exempt revenue bonds issued by the city. Under the terms of the purchase agreement, the buyer agreed to pay part of the purchase price at closing. The remainder was to be paid through a note issued by the city, which would lease the sports center from the buyer. The buyer would make bond and note payments with the revenue it received from its lease with the city. The purchase agreement required the buyer to provide the sellers with a five-year financial forecast showing that the projected net operating income of the project would be more than the amount necessary

¹ Hereinafter, we refer to decedent Robert Hansen by his first name for clarity.

to pay the debt on the buyer's financing and the bonds and note. The sale was scheduled to close on or before March 31, 2010.

Robert passed away in November 2009 prior to the closing. On March 15, 2010, while a petition to probate the estate was pending, the Ramsey County District Court appointed two co-special administrators—U.S. Bank and Pagel, Robert's former wife. The district court found that the appointment of the co-special administrators was necessary because there was insufficient time to appoint a personal representative who could close the real-estate sale before the scheduled closing date. The co-special administrators were appointed "to preserve the [e]state and to secure its proper administration until a general personal representative is appointed." Their powers were specifically limited to "execut[ing] all documents to close the sale." Shortly after their appointment, the co-special administrators agreed to an amended purchase agreement with the buyer which included additional financial forecasting requirements. The sale closed on April 27, 2010.

Just a few days later, on April 30, the district court granted a petition brought by the co-special administrators for allowance of a final account. The district court also formally discharged the co-special administrators in the same order. In its order, the district court found that the co-special administrators had "complied with all the orders of the court, with the provisions of applicable law, and fully discharged the duties of . . . [s]pecial [a]dministrator." The district court also found that "[a]ny notice required by Minnesota law ha[d] been given." No objections were raised, and the order was not appealed.

In a separate order also dated April 30, 2010, the district court formally appointed U.S. Bank and Pagel to new roles as co-personal representatives of the probate estate. After

their appointment, a series of objections and legal challenges were brought by Hansen. Layman was a party to some but not all of the challenges. As a result, Robert's estate remained an open probate matter in Ramsey County District Court.

In January 2017, Hansen and Layman filed a complaint in Hennepin County District Court alleging that U.S. Bank, in its capacity as co-special administrator of Robert's estate, had breached its fiduciary duty by failing to comply with the purchase agreements' revenue-forecasting requirements before closing the Vadnais Heights real-estate sale. The complaint further alleged that U.S. Bank had breached its duty as co-personal representative by "failing to hold itself liable for the damages caused" by its alleged breach of duty as co-special administrator.²

U.S. Bank filed a motion to dismiss. In an accompanying memorandum, U.S. Bank argued that the breach-of-fiduciary-duty claims were barred based on three different grounds: the applicable statute of limitations; the April 30, 2010 order that discharged U.S. Bank as co-special administrator; and the doctrines of res judicata and/or collateral estoppel. U.S. Bank argued in the alternative that Hennepin County District Court lacked subject-matter jurisdiction over Hansen and Layman's claims and that Ramsey County District Court was the proper venue.

In September 2017, the district court granted the motion to dismiss, concluding that the action was barred by the applicable statute of limitations. The district court did not reach the other grounds argued in support of dismissal. The supreme court ultimately

² The complaint also alleged unjust enrichment, but that claim is no longer at issue. *Hansen v. U. S. Bank Nat'l Ass'n*, 934 N.W.2d 319, 324 n.1 (Minn. 2019).

reversed the district court's decision, concluding that the breach-of-fiduciary-duty claims were not barred by the statute of limitations. *Hansen*, 934 N.W.2d at 330.

Following remand, U.S. Bank renewed its motion to dismiss the complaint in Hennepin County District Court. U.S. Bank sought dismissal based on the two remaining grounds not previously addressed by the district court: (1) the April 2010 discharge order is a final order not subject to collateral attack, and (2) res judicata and/or collateral estoppel. U.S. Bank also renewed its argument that Ramsey County District Court was the proper venue. The Hennepin County District Court concluded that res judicata and collateral estoppel did not bar the claims brought in the 2017 complaint because the prior litigation brought by Hansen did not result in a final judgment on the merits. But, with regard to U.S. Bank's argument that the claims were barred by the April 2010 discharge order, the district court concluded that Hansen and Layman should seek redress in the ongoing probate proceeding and stayed the Hennepin County action "pending the exhaustion of the parties' remedies in the Ramsey County Probate Court."

U.S. Bank and Pagel then brought a petition for instructions in Ramsey County District Court and moved to dismiss the breach-of-fiduciary-duty claims brought by Hansen and Layman in the 2017 complaint for failure to state a claim under Minn. R. Civ. P. 12.02(e).³ They argued that the probate court's April 30, 2010 order discharging the co-special administrators and approving their final account was a final judgment on all

³ As noted above, co-personal representative Pagel was not named as a defendant in the 2017 complaint. However, the ongoing litigation prevents her from presenting a final accounting and closing the probate estate. She therefore joined the motion to dismiss.

matters related to that accounting period, including the Vadnais Heights real-estate sale. U.S. Bank and Pagel further argued that because Hansen and Layman did not appeal that order within six months, as required by Minn. Stat. § 525.712 (2020), their 2017 claims were barred as a matter of law. Opposing the motion, Hansen and Layman argued that the April 2010 discharge order was an informal administrative determination not subject to the appeal deadline. They also argued that the April 2010 discharge order did not absolve U.S. Bank of any liability incurred as co-special administrator and that, because their claims were brought within the statute-of-limitations period, the appeal deadline did not apply.

The district court granted the motion to dismiss. In its order, the district court reasoned that “[a] court-approved accounting serves as a final judgment on all matters during the accounting period.” (Quotation omitted.) The district court concluded that if Hansen and Layman wished to challenge the co-special administrators’ actions before or at the closing of the real estate sale, “they were required to have done so within six months after the filing of the April 30, 2010 [o]rder” as required by Minn. Stat. § 525.712. The district court dismissed all remaining claims with prejudice.

Hansen and Layman appeal.

DECISION

We review a district court’s grant of a motion to dismiss for failure to state a claim *de novo*. *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 594 (Minn. 2021). “We accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the plaintiff.” *Id.* A claim is properly dismissed “only if

it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Id.*

Hansen and Layman present two main arguments on appeal as to why the district court erred when it granted the motion to dismiss. We are not persuaded that either of their arguments require reversal. We address each argument in turn.

Res Judicata

Hansen and Layman first argue that the district court erred by “finding that the April 30, 2010 [o]rder was res judicata with regard to [a]ppellants’ claims.” Hansen and Layman contend that res judicata does not bar their claims because U.S. Bank failed to satisfy the four-factor test that courts use to determine whether the doctrine of res judicata precludes a claim. *See Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) (laying out the four-factor test). U.S. Bank and Pagel responded that appellants’ res judicata argument is not properly before this court because “[a]ppellants’ argument was not presented to, argued before, or considered by [the Ramsey County District Court].” We agree.

We “generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted); *see also Hoyt Inv. Co. v. Bloomington Com. & Trade Ctr. Assocs.*, 418 N.W.2d 173, 175 (Minn. 1988) (stating that “an undecided question is not usually amenable to appellate review”). And a party may not “obtain review by raising the same general issue litigated below but under a different theory.” *Thiele*, 425 N.W.2d at 582.

Before the Ramsey County District Court, the focus of the parties' arguments was on whether the April 2010 discharge order barred the claims brought in the 2017 complaint. U.S. Bank and Pagel did not argue that the claims were barred by res judicata—an issue already decided by the Hennepin County District Court. Rather, U.S. Bank and Pagel argued that the April 2010 discharge order finally decided all matters related to the co-special administrators. U.S. Bank and Pagel noted that the order expressly determined that U.S. Bank, as a co-special administrator, had “complied with all orders of the court, with the provisions of applicable law, and fully discharged the duties of . . . [s]pecial [a]dministrator.” They also emphasized that Hansen and Layman failed to appeal the April 2010 discharge order within the six-month timeframe prescribed by Minn. Stat. § 525.712. And they maintained that, because the order was not appealed, “Hansen and Layman cannot now attack the [p]robate [c]ourt’s ruling by challenging the [c]o-[s]pecial [a]dministrators’ conduct with respect to the Vadnais Heights [t]ransaction.” In other words, U.S. Bank and Pagel argued that the claim in the 2017 complaint challenging U.S. Bank’s conduct as a co-special administrator was barred because the April 2010 discharge order finally decided all matters relating to the co-special administrators. Likewise, they contended that the breach-of-fiduciary-duty claim against U.S. Bank in its role as co-personal representative should be dismissed because that claim is wholly derivative of the claim arising from U.S. Bank’s role as a co-special administrator.

In response to U.S. Bank and Pagel’s arguments, Hansen and Layman did not raise any arguments relating to res judicata or even mention res judicata. Rather, they responded

to the arguments made by U.S. Bank and Pagel. First, they argued that the April 2010 discharge order was an “administrative determination and not a judicial determination requiring appeal.” Next, they argued that the terms of the April 2010 discharge order “did not absolve U.S. Bank of any liability U.S. Bank may have incurred while serving the [e]state in a fiduciary capacity.” Finally, they contended that U.S. Bank and Pagel’s motion to dismiss sought “to conduct an end run around the Minnesota Supreme Court’s holding that the [b]eneficiaries’ claims against U.S. Bank did not accrue until at least 2012.” They did not argue that U.S. Bank and Pagel failed to satisfy all four elements of a res judicata defense—the res judicata argument that they now advance on appeal. Hansen and Layman concede as much in their reply brief when they acknowledge that they “did not argue for the strict application of the [res judicata] four-factor test before the [district] court.” In short, Hansen and Layman did not reference res judicata in their response to the motion to dismiss.

Likewise, the Ramsey County District Court did not discuss res judicata in its order. Instead, the district court analyzed the arguments made by the parties. The district court first concluded that Hansen and Layman’s breach-of-fiduciary-duty claims were barred by the April 2010 discharge order. In reaching this conclusion, the district court reasoned that “[a] court-approved accounting serves as a final judgment on all matters during that accounting period.” (Quotation omitted.) The court further emphasized that, if Hansen and Layman “wished to contest” U.S. Bank’s actions as a co-special administrator, they were required by Minn. Stat. § 525.712 to appeal the April 2010 discharge order within 6 months after the order was filed. The district court also addressed Hansen and Layman’s

argument regarding the statute of limitations, concluding that “[t]he fact that the statute of limitations period has not run . . . does not mean the claims are still viable in light of a missed deadline for appeal.” The district court did not cite or apply the doctrine of res judicata anywhere in its order granting the motion to dismiss.

As the forgoing detailed review of the record demonstrates, the issue of res judicata was not raised or decided during the motion-to-dismiss proceedings before the Ramsey County District Court. Consequently, there is no ruling on this point by the district court for this court to review, and we decline to address the res judicata arguments raised by Hansen and Layman on appeal. *See Thiele*, 425 N.W.2d at 582 (holding that an appellate court may address “only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.”).⁴

Personal Representative Claim

Hansen and Layman next argue that the district court erred for other reasons when it dismissed their breach-of-fiduciary-duty claim against U.S. Bank in its capacity as co-personal representative. That claim alleges that U.S. Bank breached its fiduciary duty as co-personal representative by “failing to hold itself liable for the damages caused” by its alleged breach of duty as co-special administrator. Hansen and Layman appear to argue that even if they do not prevail on their res judicata argument, their breach-of-fiduciary-

⁴ Hansen and Layman argue that this results in an injustice because the supreme court decided in previous litigation that appellants’ claims are not time-barred by the applicable statute of limitations. *See Hansen*, 934 N.W.2d at 330. We acknowledge these concerns, but they do not override the principles that determine whether an issue is properly before this court on appeal.

duty claim against U.S. Bank related to its separate role as co-personal representative survives. We are not persuaded.

Hansen and Layman's breach-of-fiduciary-duty claim against U.S. Bank in its capacity as co-personal representative derives completely from their claim against U.S. Bank in its capacity as co-special administrator. In their complaint, Hansen and Layman do not allege that U.S. Bank took or failed to take any particular independent action as co-personal representative that breached its fiduciary duty to the beneficiaries of Robert's estate. Rather, Hansen and Layman allege only that U.S. Bank should have sued itself for its alleged breach as co-special administrator. Because Hansen and Layman have not demonstrated any grounds for reversal of their claim against U.S. Bank in its capacity as co-special administrator, we discern no basis for reversal of the district court's dismissal of Hansen and Layman's derivative claim against U.S. Bank in its capacity as co-personal representative.

Finally, Hansen and Layman argue that the case should be remanded because the district court did not specifically address their breach-of-fiduciary-duty claim against U.S. Bank as co-personal representative. This argument is not persuasive either. When a district court is presented with an argument and does not rule on it, "we assume the argument was implicitly rejected." *Hogenson v. Hogenson*, 852 N.W.2d 266, 275 (Minn. App. 2014). The fact that the district court did not specifically address this claim does not warrant remand.

In sum, Hansen and Layman's arguments on appeal do not warrant reversal of the district court's order dismissing the breach-of-fiduciary-duty claims against U.S. Bank set forth in the 2017 complaint.

Affirmed.