

*This opinion is nonprecedential except as provided by  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  
A22-0074**

Voyageurs Retreat Community Association, et al.,  
Appellants,

vs.

City of Biwabik, a Municipal Corporation,  
Defendant,

and

Town of White, a duly organized Minnesota Township,  
Respondent.

**Filed September 19, 2022  
Reversed and remanded  
Bryan, Judge**

St. Louis County District Court  
File No. 69DU-CV-20-1599

Karla M. Vehrs, Jenna K. Johnson, Ballard Spahr LLP, Minneapolis, Minnesota (for appellants)

Jason J. Kuboushek, Andrew A. Wolf, Iverson Reuvers, Bloomington, Minnesota (for respondent)

Cassandra C. Wolfgram, Robert B. Bauer, Dougherty, Molenda, Solfest, Hills & Bauer, P.A., Apple Valley, Minnesota; and

Larry C. Minton, Law Offices of Larry C. Minton, Howard, Minnesota (for defendant)

Considered and decided by Gaïtas, Presiding Judge; Cochran, Judge; and Bryan, Judge.

## **NONPRECEDENTIAL OPINION**

**BRYAN**, Judge

In this action seeking to invalidate a perpetual revenue-sharing agreement between two municipalities, appellant-taxpayers challenge the district court's grant of summary judgment in favor of respondent-township. Appellants argue that the district court erred by determining that their claims were barred by collateral estoppel, and they urge this court to hold that the revenue-sharing agreement is void. We conclude that the district court erred in determining that collateral estoppel applied, and we therefore reverse summary judgment. We decline to reach the merits of appellants' challenge to the validity of the revenue-sharing agreement, remanding the case to the district court.

### **FACTS**

In September 2020, appellants—taxpaying property owners in Biwabik—commenced this action against the City of Biwabik and neighboring White Township. The lawsuit sought declaration that a 2002 revenue-sharing agreement (RSA) between Biwabik and White is void because it violates Minnesota statutes, Biwabik's city charter, and the Minnesota Constitution. The district court granted summary judgment for White, concluding that appellants' action was barred by collateral estoppel because Biwabik previously challenged the validity of the RSA in a 2011 action against White. This appeal follows. Given the arguments on appeal, we discuss the 2002 revenue-sharing agreement, the previous litigation in 2011, and the claims in appellants' complaint.

Biwabik and White are municipalities located in St. Louis County. Biwabik is a home-rule charter city with a population of just under 1,000, and White is a township

covering 36 square miles with a population of approximately 1,492. In April 2001, Biwabik sought to annex unincorporated adjoining property located within White. In September 2002, Biwabik and White entered into a joint resolution to accomplish the annexation of these areas. The joint resolution included the RSA, which obligated Biwabik to perpetually reimburse White for the tax revenue that White would lose as a result of the annexation. The joint resolution stated, “This revenue sharing plan shall be perpetual, and the parties specifically intend to be contractually bound hereby.”

The joint resolution stated that Biwabik and White were “aware that certain provisions of this Joint Resolution may appear to contravene relevant Minnesota law.” Specifically, the provisions of Minnesota Statutes section 414.036 (2002) restrict municipalities from reimbursing townships for tax revenues for more than six years after annexation. Accordingly, the parties jointly pursued enactment of special legislation permitting the revenue-sharing provisions of the resolution. In May 2003, the state legislature passed, and the governor signed, legislation authorizing the RSA. 2003 Minn. Laws ch. 119, § 2 at 706. The legislation provided that “the city of Biwabik may reimburse the town of White for orderly annexed property for a period of time and in amounts agreed to by the city and town under an orderly annexation agreement.” *Id.*

Biwabik and White proceeded under the terms of the joint resolution for several years. In 2006, Biwabik started withholding money owed under the joint resolution. White objected to Biwabik’s withholding of payments and the parties periodically discussed the amount owed. In December 2011, White commenced an action against Biwabik for breach of contract, seeking to recover the full amount outstanding under the joint resolution.

Biwabik filed a counterclaim against White, asking the district court to declare the joint resolution illegal and void.

After learning about the lawsuit between White and Biwabik, Voyageurs Retreat Community Association (VRCA)—an appellant in the present action—filed a motion to intervene in the 2011 action. VRCA is an association that administers a common-interest community in Biwabik. The association consists of individual unit owners who pay property taxes. In its motion to intervene, VRCA argued that it “has a genuine interest in the [RSA] . . . because that ‘revenue sharing’ arrangement results in a substantial amount of the property taxes paid by [VRCA] and its members going into the coffers of [White] in exchange for no municipal services or value whatsoever.” The district court denied VRCA’s motion to intervene in an April 10, 2013 order. The district court concluded that VRCA’s interests “are adequately represented by the City of Biwabik” because VRCA advanced the same legal arguments and requested the same relief as Biwabik. VRCA did not appeal the district court’s denial of its motion to intervene.

Biwabik and White brought cross-motions for summary judgment. In a September 30, 2013 order, the district court denied Biwabik’s motion to dismiss and for summary judgment, and it granted White’s motion for partial summary judgment. The district court rejected Biwabik’s arguments that the RSA in the 2002 joint resolution was illegal or contrary to public policy. Specifically, the district court determined that (1) the RSA did not violate the Minnesota Constitution by modifying Biwabik’s power to tax; (2) the RSA was not preempted by Minnesota Statutes section 414.036; and (3) the 2003 special legislation applied to the joint resolution. After a three-day court trial, the district

court issued its findings of fact, conclusions of law, order for judgment, and judgment on June 5, 2014, in which it reiterated its determination that the RSA was valid. The district court addressed White's breach-of-contract claim against Biwabik, entered judgment in favor of White, and ordered Biwabik to pay \$1,092,488.88 to White.

In October 2014, Biwabik and White entered into a mediated settlement agreement to settle their outstanding claims. Under the terms of the settlement agreement, Biwabik agreed to continue making payments to White as required under the RSA. The settlement agreement did not change the perpetuity language of the RSA. Biwabik also agreed not to appeal any decision made by the district court in that action, and White agreed to certain maintenance obligations. This agreement brought an end to the 2011 action.

In September 2020, appellants commenced the present action against Biwabik and White. Appellants are VRCA, Giants Ridge Lake Villas Resort Association, Giants Ridge Woodlands Homeowners Association, and three individuals (who are also members of VRCA). The members of these associations own property located in Biwabik and pay taxes assessed on the property. The complaint sought declaratory judgment regarding both the RSA and the 2014 settlement: "Biwabik does not have the authority to disburse public funds to White Township pursuant to the 2002 Resolution or the 2014 Settlement Agreement and declaring such provisions void." Appellants moved for summary judgment, raising several issues, including the following: (1) whether the RSA violated Minnesota Statutes section 414.0325 (2002); (2) whether the RSA violated Minnesota Statutes section 414.036, in light of *In re Annexation of Certain Real Prop. to City of Proctor from Midway Twp.*, 925 N.W.2d 216, 220 (Minn. 2019) (concluding that section

414.0325 does not preempt application of other sections of the statute to nonparties); (3) whether Biwabik exceeded its authority under state law and Biwabik's charter when it ratified the 2014 settlement agreement; (4) whether the RSA violated Biwabik's charter by requiring funds to be appropriated before any obligation could be incurred; (5) whether the RSA satisfied the requirements of the 2003 special legislation; and (6) whether the RSA violated the Minnesota Constitution because it required Biwabik to spend public funds without a public purpose. White also moved for summary judgment. White argued that appellants' claims were barred by the doctrines of res judicata and collateral estoppel and that the settlement agreement was authorized by statute and the 2003 legislation. The district court granted summary judgment for White and denied summary judgment for appellants in a November 19, 2021 order. The district court agreed with White that collateral estoppel barred appellants' claims and entered judgment for White.

### **DECISION**

Appellants argue that the district court erred when it granted summary judgment for White based on collateral estoppel. Because appellants were not parties or in privity with the parties to the 2011 action,<sup>1</sup> we conclude that collateral estoppel does not preclude this action and summary judgment was, therefore, inappropriate.

---

<sup>1</sup> White also argues that the doctrine of res judicata applies. Both doctrines require demonstration that a new action involved the same parties or privies to parties in a prior action. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) (noting that res judicata applies if "the earlier claim involved the same parties or their privies"). Given our decision that collateral estoppel does not apply because appellants were neither parties nor in privity with the parties to the 2011 action, we need not separately address the elements of res judicata.

The doctrine of collateral estoppel “prevent[s] litigants from relitigating in subsequent actions identical issues that were determined in a prior action.” *Heine v. Simon*, 702 N.W.2d 752, 761 (Minn. 2005). Also known as “issue preclusion,” collateral estoppel “applies to specific legal issues that have been adjudicated.” *Hauschildt*, 686 N.W.2d at 837. For collateral estoppel to apply, all of the following four elements must be met:

(1) the issue to be addressed is identical to an issue in a prior adjudication; (2) there was a final judgment on the merits in the prior adjudication; (3) the estopped party was a party to or in privity with a party to the prior adjudication; and (4) the estopped party received a full and fair opportunity to be heard on the adjudicated issue.

*State Farm Mut. Auto. Ins. Co. v. Lennartson*, 872 N.W.2d 524, 534 (Minn. 2015). Courts should not rigidly apply collateral estoppel, but rather should focus on whether application of the doctrine “would work an injustice on the party against whom [collateral estoppel] is urged.” *Hauschildt*, 686 N.W.2d at 837. The party asserting collateral estoppel has the burden to establish all four elements. *Id.* Whether collateral estoppel applies is a mixed question of fact and law, which we review de novo. *Id.*

Here, appellants argue that the district court’s decision is erroneous because the first, third, and fourth elements of collateral estoppel are not met. We conclude that the third element is not satisfied because appellants were not parties to or in privity with a party to the 2011 action.<sup>2</sup> Under the “parties or privity” element, the party in the present action

---

<sup>2</sup> We have additional concerns regarding whether White can establish the first element because the specific legal issues appellants raise in the present action are distinguishable from those raised in the 2011 action. Although in the broadest terms, appellants challenge the validity of the RSA, just as Biwabik did in the 2011 action, appellants’ arguments raise new and different specific legal issues, including (among other arguments) that Biwabik

must have been a party to the prior action or in privity with a party to the prior action. *Lennartson*, 872 N.W.2d at 534. Persons are in privity with the parties to an action when, even though they “are not parties to an action,” they are nevertheless “connected with the parties . . . as to be identified with them in interest, and consequently to be affected with them by the litigation.” *Rucker v. Schmidt*, 794 N.W.2d 114, 118 (Minn. 2011) (quotation omitted). We determine whether privity exists by examining the particular circumstances of each case. *Margo-Kraft Distribs., Inc. v. Minneapolis Gas Co.*, 200 N.W.2d 45, 47 (Minn. 1972).

Persons may be in privity with another party under various circumstances, including when “(1) they control an action despite not being a named party to it, (2) a party represents their interests in an action, or (3) they are successors in interest to persons with derivative claims.” *Ward v. El Rancho Manana, Inc.*, 945 N.W.2d 439, 447 (Minn. App. 2020) (citing *Margo-Kraft Distribs.*, 200 N.W.2d at 47), *rev. denied* (Minn. Oct. 1, 2020). Privity also may exist when a party is “so identified in interest with another that he represents the same legal right.” *Rucker*, 794 N.W.2d at 118 (quotation omitted). The focus in determining

---

exceeded its authority when it ratified the 2014 settlement agreement and that the RSA is void under the Biwabik charter, exceeds the scope of the 2003 special legislation, violates section 414.036 in light of *City of Proctor*, 925 N.W.2d at 220, and violates the Minnesota Constitution because the funds transferred from Biwabik to White are expended without a “public purpose.” We also acknowledge the necessary overlap of the third and fourth elements. *See Crossman v. Lockwood*, 713 N.W.2d 58, 62 (Minn. App. 2006) (noting that the “rationale behind the requirement of privity is closely associated with the fourth requirement of [collateral estoppel], thus effectively merging consideration of the two” (quotation omitted)). We need not determine whether the district court erred in its analysis of the first or fourth elements of collateral estoppel, however, given our decision regarding the third element. *See Hauschildt*, 686 N.W.2d at 837 (requiring the party asserting collateral estoppel to establish all four elements).

whether privity exists “is on whether the legal rights of the party to be estopped were adequately represented by the party to the first litigation.” *State v. Lemmer*, 736 N.W.2d 650, 661 (Minn. 2007); *see also Margo-Kraft Distribs.*, 200 N.W.2d at 47 (holding that third-party defendant in the first lawsuit was not estopped from commencing a second suit involving the same parties because its “rights and liabilities were not expressly put in issue in the first action”).

White argues that appellants were in privity with Biwabik, a defendant in the 2011 action. White also argues that this element is met by virtue of VRCA’s unsuccessful motion to intervene in the 2011 action.<sup>3</sup> We are not convinced by either proposition.

We first conclude that appellants in the present action were not in privity with Biwabik in the 2011 action. Unlike typical privies, appellants had no control of Biwabik’s actions and are not successors in interest of Biwabik. *See Ward*, 945 N.W.2d at 447. In addition, as taxpayers, appellants have distinct interests from Biwabik, the municipality collecting and spending tax revenue. Biwabik’s interest diverged from appellants’ interest when it entered into the RSA with White, when it lobbied for the 2003 special legislation, and when it ratified the 2014 settlement agreement, which continued the perpetual payment obligations that appellants so strongly oppose. Biwabik also promised not to appeal, a decision that does not benefit or promote appellants’ stated interests. For these reasons, appellants’ legal rights were not the same as Biwabik’s during the 2011 action and the

---

<sup>3</sup> Although the district court did not decide the collateral-estoppel issue on this basis, we consider White’s alternative argument because we are reviewing a grant of summary judgment. *See Doe v. Archdiocese of St. Paul*, 817 N.W.2d 150, 163 (Minn. 2012) (affirming summary judgment decision on grounds not addressed by the district court).

negotiation of the 2014 settlement agreement, and appellants' interests were not adequately represented by Biwabik or put in issue in the prior litigation. *See Ward*, 945 N.W.2d at 447; *Margo-Kraft Distribs.*, 200 N.W.2d at 46-47; *Lemmer*, 736 N.W.2d at 661.

We also conclude that the “parties or privity” element cannot be met based on VRCA’s motion to intervene in the 2011 action and on the alignment of VRCA’s interests with that of the other, remaining appellants. To support this alternative argument, White asserts that rule 24 of the Minnesota Rules of Civil Procedure refers to a person seeking to intervene as a “party.” Minn. R. Civ. P. 24.03 (“Within 30 days after service upon the *party* seeking to intervene of a notice of objection to intervention, the *party* shall serve a motion to intervene upon all parties as provided in Rule 5.” (emphasis added)). White cites no authority, however, and we are aware of none, establishing that the use of the word “party” in rule 24 relates to our analysis of privity for purposes of collateral estoppel. Indeed, as noted above, the Minnesota Supreme Court has iterated the proper analysis to decide whether parties are in privity, requiring “a careful examination of the circumstances of each case,” *Rucker*, 794 N.W.2d at 118, and a determination of whether the rights and liabilities of the party to be estopped were “expressly put in issue in the first action,” *Margo-Kraft Distribs.*, 200 N.W.2d at 47; *Lemmer*, 736 N.W.2d at 661. We decline to hold that rule 24 limits or abrogates the holdings in *Rucker*, *Margo-Kraft*, and *Lemmer* in favor of a new, per se rule applying automatically to all putative intervenors.

Finally, in reaching our decision, we conclude equitable considerations weigh against applying collateral estoppel. The supreme court has warned that collateral estoppel is not to be “rigidly applied.” *Hauschildt*, 686 N.W.2d at 837; *see also AFSCME*

*Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (recognizing that collateral estoppel should be “qualified or rejected when [its] application would contravene an overriding public policy” (quotation omitted)). Because collateral estoppel is a “flexible doctrine,” the focus in such an inquiry “is on whether its application would work an injustice on the party against whom estoppel is urged.” *Johnson v. Consol. Freightways, Inc.*, 420 N.W.2d 608, 613-14 (Minn. 1988). Here, Biwabik taxpayers are directly affected by the RSA and no taxpayers have ever had the opportunity to challenge the propriety of the RSA or Biwabik’s actions. Although VRCA previously tried to intervene in the 2011 litigation, we do not believe that one taxpayer’s unsuccessful attempt to intervene should bar all taxpayers from raising future challenges. Based on appellants’ interests in this case, we conclude that application of collateral estoppel here would work an injustice.

For these reasons, we conclude that the district court erred by determining that collateral estoppel applied to and barred appellants’ claims. Accordingly, we reverse the district court’s grant of summary judgment for White. Although appellants urge this court to reach the merits of their arguments and to declare the RSA void, we decline to do so in this appeal. This court generally does not decide issues that were not presented to the district court, especially when the unaddressed issue may involve questions of fact. *In re A.D.*, 883 N.W.2d 251, 261 (Minn. 2016); *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn.

1988). Because the issues raised by appellants could involve factual disputes, remand is appropriate.<sup>4</sup>

**Reversed and remanded.**

---

<sup>4</sup> Appellants argue that, if we remand this case, we should remand it to a district court in a different county because of “possible political ramifications” if the case were decided by a judge elected in the same county as Biwabik and White. Appellants did not file a motion for change of venue with the district court, and there is no decision from the district court regarding venue for us to review. *See* Minn. Stat. §§ 542.01 (providing that every civil action is to be tried “in the county in which it was begun”), .11 (listing grounds for which venue of a civil action “may be changed by order of the court”) (2020). Thus, it is not appropriate for this court to grant appellants’ request. *See Thiele*, 425 N.W.2d at 582.