

*This opinion is nonprecedential except as provided by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
A23-0055**

Thomas Shimota,
Appellant,
B&T Automotive, Inc., et al.,
Plaintiffs,

vs.

Klemp & Stanton, PLLP, et al.,
Respondents,
Estate of Robert Shimota,
Defendant,
Elizabeth Shimota,
Respondent.

**Filed July 24, 2023
Affirmed
Reyes, Judge**

Dakota County District Court
File No. 19HA-CV-22-148

Thomas Shimota, Rosemount, Minnesota (self-represented appellant)

Kay Nord Hunt, Michelle K. Kuhl, Lommen Abdo, P.A., Minneapolis, Minnesota (for
respondents Klemp & Stanton, et al.)

Elizabeth Shimota (self-represented respondent)

Considered and decided by Ross, Presiding Judge; Bjorkman, Judge; and Reyes,
Judge.

NONPRECEDENTIAL OPINION

REYES, Judge

Appellant argues that the district court erred by (1) granting summary judgment to respondents on his fraud claim based on collateral estoppel and the statute of limitations and (2) dismissing his legal-malpractice claims based on the statute of limitations. Appellant further contends that the district court abused its discretion by denying his motions to compel discovery and for a continuance. We affirm.

FACTS

*Thomas Shimota's Allegations*¹

In 1988, appellant Thomas Shimota went into business with his brother, Robert Shimota, to own and operate NAPA auto-parts stores. Later that year, the brothers incorporated their business as B&T Automotive, Inc. In 1989, the brothers signed a stock-purchase agreement, which prohibited transfers of interests in B&T Automotive without written consent from both. The brothers also purchased life insurance from Federated in 1989 and from Oldline, now AIG, in 1999, including \$1,000,000 on Robert's² life to fund the buy-sell and stock-purchase agreements in the event of Robert's death. B&T Automotive paid the premiums on both policies until Robert's death on November 11, 2014.

¹ The following facts are taken from Thomas Shimota's complaint.

² Because several parties have the same last name of Shimota, we refer to them by their first names in this opinion.

In 1994, the brothers purchased real property in New Prague (the New Prague property) as joint tenants for \$186,000. Respondent Scott Klemp incorporated B&T Investments in 2007 for the brothers. Klemp prepared stock certificates for both brothers as well as subscription agreements with restrictions on transfers, under which any transfer without consent from both brothers is voidable. Subsequently, Klemp prepared a deed for the brothers to transfer their ownership of the New Prague property, from which they operated their NAPA auto parts business in New Prague, to B&T Investments. Klemp also arranged for the deed to be signed by Robert's wife, respondent Elizabeth Shimota, for Elizabeth to waive any and all interest in the New Prague property.

Thomas learned about Robert's impending death in October 2014. During a meeting with Robert and Klemp on November 6, 2014, Thomas agreed to a valuation of \$1.2 million for all their businesses and agreed to pay a flat amount of \$600,000 for Robert's share. The brothers also agreed to direct the proceeds from Robert's life-insurance policies to Thomas to fund his purchase of Robert's interests. The brothers signed a written resolution drafted by Klemp that day. The written resolution represented that Thomas and Robert had independent authority to take action for the purpose of designating and changing the beneficiaries on any life-insurance policies owned by B&T Automotive.

On November 7, 2014, Klemp sent Thomas an undated cross-purchase agreement, which Robert had already signed. Thomas alleged that Klemp falsely represented that the cross-purchase agreement reflected the brothers' oral agreement from the November 6, 2014 meeting. Thomas trusted Klemp and did not have a meaningful opportunity to read

the cross-purchase agreement before Klemp pressured him to sign it. However, Klemp had multiple meetings and communications with Elizabeth and Robert outside of Thomas's presence. Without Thomas's knowledge or consent, Klemp prepared stock certificates for Elizabeth for B&T Automotive and B&T Investments, making Elizabeth a joint owner with Robert with rights of survivorship upon Robert's death. Thomas alleged that Klemp concealed those stock certificates for Elizabeth from him.

After Robert's death on November 11, 2014, Klemp directed Thomas to pay Elizabeth \$800,000 in cash, despite knowing that Elizabeth was entitled to no more than \$600,000 for Robert's share. Thomas paid Elizabeth³ and also paid the mortgage and made improvements on the New Prague property.⁴ Thomas alleged that Klemp and Elizabeth's actions deprived him of clear title in the New Prague property. Moreover, under the terms of the November 6, 2014 oral agreement, Thomas was entitled to receive all of Robert's interest in their businesses upon payment of \$600,000. But because Klemp arranged for Elizabeth to receive stock certificates directly, Elizabeth had the ability to refuse to turn over the businesses or pay her share of the debts of Robert's estate.

³ Thomas did not specify the date of this payment of \$800,000 to Elizabeth in the complaint or his brief on appeal.

⁴ It is unclear from the record whether Thomas made these payments for the New Prague property before or after Robert's death. Because the complaint alleged that Robert handled the financials for the businesses exclusively before his death, Thomas appears to contend that he made those payments after Robert's death but before knowing about Elizabeth's interests in the businesses.

Procedural History

In January 2022, Thomas brought an action against Klemp and Klemp & Stanton PLLP (collectively Klemp defendants), Robert's estate, and John/Jane Does. The complaint alleged five claims: (1) conversion of insurance proceeds and the New Prague property; (2) fraud and misrepresentation based on Klemp's concealment of the stock certificates he prepared for Elizabeth regarding B&T Investments and B&T Automotive; (3) negligence in Klemp defendants' legal representation; (4) breach of contract by Klemp defendants for failing to provide proper and competent legal service; and (5) breach of fiduciary duty by Klemp defendants for failing to disclose Elizabeth's interests in the businesses upon Robert's death. Thomas alleged that he did not learn about the fraud until November 1, 2018, when First Farmer's Bank provided him a copy of the stock certificates for B&T Investments and deeds for the New Prague property, which Robert purportedly signed four days before his death, transferring an interest to Elizabeth and Robert jointly.

On May 27, 2022, the district court granted Klemp defendants' motion to dismiss the claims of conversion, negligence, breach of contract, and breach of fiduciary duty because they were barred by the six-year statute of limitations. It denied Klemp defendants' motion to dismiss the claim of fraud and misrepresentation because the six-year statute of limitations did not start running until Thomas discovered or should have discovered the fraud by reasonable diligence. Moreover, the district court found that Thomas alleged a fiduciary relationship with Klemp that could toll the statute of limitations

for the fraud claim until November 2018, when Thomas saw Elizabeth's stock certificates for the first time.

During the pendency of this case, Elizabeth sued Thomas in Scott County (Scott County case)⁵ for breach of contract and breach of fiduciary duty. Following a three-day court trial, the Scott County district court found that "[Thomas] was aware of th[e] transfer of membership interests [in B&T Investments] to [Elizabeth] in joint tenancy with Robert Shimota at the December 9, 2014, meeting . . . at the latest. There is no evidence [that Thomas] contemporaneously objected to that transfer of membership interest." The Scott County district court further found that Thomas breached his fiduciary duty to Elizabeth by holding a member meeting of B&T Investments without Elizabeth's knowledge on January 26, 2019, when he unilaterally "invalidated" Elizabeth's membership. On October 6, 2022, the Scott County district court issued a final judgment in Elizabeth's favor on her claims of breach of contract and breach of fiduciary duty.

On November 17, 2022, Klemp defendants moved for summary judgment on the remaining claim of fraud. They argued that because the Scott County district court conclusively found that Thomas knew about Elizabeth's one-half ownership interests in B&T Investments no later than December 9, 2014, the district court in this case should apply collateral estoppel and determine that Thomas's fraud claim was time-barred under Minn. Stat. § 541.05, subd. 1(6) (2022).

⁵ File No. 70-CV-18-6768.

On December 2, 2022, Thomas filed a “notice of countermotion,” seeking an order “denying the summary judgment as premature and because genuine issue as to any material facts exist,” in addition to a motion for a continuance and a motion to compel discovery. A few days later, Klemp defendants filed a reply memorandum. On December 9, 2022, Thomas filed a supplemental affidavit titled “DISPUTED FACTS: Plaintiff’s Analysis of Defendant’s Answers to Complaint of Defendants” and another memorandum. Later that day, Klemp defendants moved to strike Thomas’s December 9, 2022 filings. The district court granted the motion to strike, stating that the “Minnesota Rule of General Practice 115.03(a)-(c) does not provide for a response to a reply memorandum, meaning a second set of responsive filings, such as those filed by [Thomas] on December 9, 2022. Further, the district court granted the motion for summary judgment on the sole remaining claim of fraud and dismissed the claim with prejudice. Finally, it denied the motion to continue for lack of good cause and the motion to compel discovery as moot. This appeal follows.

DECISION

I. The district court did not err by granting respondents’ summary-judgment motion on the fraud claim.

Thomas argues that the district court erred by granting summary judgment to dismiss the fraud claim based on collateral estoppel and the statute of limitations. We disagree.

Appellate courts review “the grant of summary judgment de novo to determine whether there are genuine issues of material fact and whether the district court erred in its

application of the law.” *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quotation omitted).

Collateral estoppel is an equitable doctrine that prohibits parties from relitigating “a right, question, or fact distinctly put in issue and directly determined in a prior adjudication.” *Coughlin v. Radosevich*, 372 N.W.2d 817, 819 (Minn. App. 1985), *rev. denied* (Minn. Nov. 1, 1985); *see also Ill. Farmers Ins. Co. v. Reed*, 662 N.W.2d 529, 532 (Minn. 2003) (referring to collateral estoppel as an “equitable doctrine”). “Whether collateral estoppel precludes litigation of an issue is a mixed question of law and fact that [appellate courts] review de novo.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). We review whether collateral estoppel may apply to a given set of facts de novo. *Mower Cnty. Hum. Servs. v. Graves*, 611 N.W.2d 386, 388 (Minn. App. 2000). But once we determine that collateral estoppel is available, “the decision to apply collateral estoppel is left to the district court’s discretion.” *In re Est. of Perrin*, 796 N.W.2d 175, 179 (Minn. App. 2011) (quotation omitted), *rev. denied* (Minn. June 28, 2011).

Collateral estoppel is available when

- (1) the issue was identical to 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.

Reed, 662 N.W.2d at 531.

The dispositive question here is when the statute of limitations period began to run on the fraud claim. The statute of limitations period for a fraud claim is six years. Minn. Stat. § 541.05, subd. 1(6). The limitations period begins to run after the aggrieved party

discovers, or should have discovered by reasonable diligence, the facts constituting the fraud. *Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985).

At the pleading stage, Thomas alleged that he did not discover the fraud until November 2018, when he saw Elizabeth's stock certificate for B&T Investments for the first time. During the pendency of this case, however, the Scott County District Court found in a related case that Thomas knew about Elizabeth's one-half ownership interests in B&T Investments at a meeting on December 9, 2014, which was more than six years before he filed the present case. The district court in this case determined that the elements of collateral estoppel were met as to Thomas acquiring actual knowledge of the B&T Investments interests transfer to Elizabeth in December 2014. We analyze each element of collateral estoppel in turn.

First, Thomas argues that the two cases involved different legal issues because the claim in the present case is fraud, whereas the claim in the Scott County case was breach of fiduciary duty. However, collateral estoppel does not require identical *claims* but only identical *issues*. See *Walden Bros. Lumber, Inc. v. Wiggin*, 408 N.W.2d 675, 677 (Minn. App. 1987), *rev. denied* (Minn. Aug. 19, 1987) ("Collateral estoppel applies when separate actions involve different claims, but identical parties and issues.").

To determine whether Thomas breached a fiduciary duty to Elizabeth as a member of B&T Investments, the Scott County District Court had to determine when Thomas learned about Elizabeth's membership interest in the businesses. Likewise, in the instant case, Thomas's theory of fraud is that Klemp concealed the stock certificates that he had prepared for Elizabeth when Robert was dying. In other words, Klemp allegedly concealed

the transfer of membership interest to Elizabeth. Therefore, the timeliness of Thomas's fraud claim similarly turns on when Thomas learned about Elizabeth's membership interest in the businesses. The element of identical issues is met.

Thomas further argues that his knowledge of Elizabeth's membership interests is immaterial because the December 9, 2014 meeting occurred before he paid Elizabeth \$800,000 for Robert's share. Thomas appears to claim that the fraud had not accrued until he acted in reliance upon the alleged misrepresentation. *See Davis v. Re-Trac Mfg. Corp.*, 149 N.W.2d 37, 39 (Minn. 1967) (stating one element of a fraud claim requires action in reliance upon the misrepresentation). Thomas did not specify the date of this \$800,000 payment, but it appears to have been made before February 26, 2015. Even if we were to take this later date as the beginning of the limitations period, more than six years had passed as of January 2022 when Thomas filed this case. The fraud claim therefore would still be time-barred.

Second, there was a final judgment on the merits in the Scott County case. "[A] judgment becomes final when it is entered in the district court and it remains final, despite a pending appeal, until it is reversed, vacated or otherwise modified." *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 221 (Minn. 2007). Judgment of the Scott County case was entered in October 2022 and remains final.⁶ The second element is met.

⁶ Thomas appealed from a November 7, 2022 order from the Scott County case granting an award of attorney fees to Elizabeth. But because the order determining attorney fees had not been entered into a final judgment, we dismissed the appeal as premature on January 31, 2023. *Shimota v. Shimota*, No. A23-0051 (Minn. App. Jan. 31, 2023) (order).

Third, Thomas argues that the two cases did not have identical parties because Klemp was not a party in the Scott County case. But whether Klemp was a party in that case is irrelevant. Minnesota does not require complete identity of parties to apply collateral estoppel. *See Miller v. Nw. Nat'l Ins. Co.*, 354 N.W.2d 58, 61-62 (Minn. App. 1984). Rather, only the party against whom collateral estoppel is asserted must be a party in the first action or in privity with a party in the first action. *Id.* Thomas is a party in both cases. The third element is met.

Fourth, Thomas had a fair opportunity to be heard on the adjudicated issue. The Scott County case went through a three-day court trial, during which Thomas, Elizabeth, and Klemp testified on the issue of whether and when Thomas knew of the B&T Investments interest transfer to Elizabeth. The fourth element is also met.

We conclude that the district court acted within its discretion by applying collateral estoppel and concluding that the fraud claim is time-barred by the six-year statute of limitations. And because Thomas has not alleged any facts that will affect the outcome of this case once the statute of limitations has run, we further conclude that there was no genuine dispute of material facts and that the district court properly granted summary judgment for respondents on the fraud claim. *See O'Malley v. Ulland Bros.*, 549 N.W.2d 889, 892 (Minn. 1996) (“A fact is material if its resolution will affect the outcome of a case.”).

II. The district court did not err by dismissing the malpractice claims as barred by the statute of limitations.

Thomas argues that the district court erred by dismissing the claims for negligence, breach of contract, and breach of fiduciary duty on statute-of-limitations grounds. We are not persuaded.

The district court dismissed these claims pursuant to Minn. R. Civ. P. 12.02(e). “[Appellate courts] review de novo the district court’s grant of a motion to dismiss under Minn. R. Civ. P. 12.02(e). In so doing, [a reviewing court] consider[s] only the facts alleged in the complaint, accepting those facts as true.” *Sipe v. STS Mfg., Inc.*, 834 N.W.2d 683, 686 (Minn. 2013) (quotation and citation omitted).

For purposes of a statute-of-limitations analysis, these claims each fall under the scope of an action for legal malpractice. *See Frederick v. Wallerich*, 907 N.W.2d 167, 172-73 (Minn. 2018). Under Minnesota law, a claim for legal malpractice accrues “when the plaintiff can allege sufficient facts to survive a motion to dismiss for failure to state a claim upon which relief can be granted.” *Antone v. Mirviss*, 720 N.W.2d 331, 335 (Minn. 2006). Minnesota applies the “damage rule of accrual, under which the cause of action accrues and the statute of limitations begins to run when some damage has occurred as a result of the alleged malpractice.” *Id.* at 335-36 (quotations omitted). “[T]he ability to ascertain the exact amount of damages is not dispositive with respect to the running of the statute of limitations.” *Id.* at 338. This rule “does not look solely to the specific damages for which [a] client seeks relief, but considers any compensable damage sustained by the client as a result of the attorney’s malpractice.” *Id.* at 332.

Thomas posits that “some damage” accrued for his legal malpractice claims on November 1, 2018, when he saw Elizabeth’s stock certificate for B&T Investments for the first time. Thomas’s argument is not supported by Minnesota caselaw, under which his knowledge of the malpractice is irrelevant for statute-of-limitations purposes. *See id.* at 335-38; *see also Herrmann v. McMenemy & Severson*, 590 N.W.2d 641 (Minn. 1999). In *Antone*, a client brought a legal-malpractice claim against his attorney. 720 N.W.2d. at 332. The client asserted that his attorney was negligent when he drafted the client’s antenuptial agreement. *Id.* The supreme court held that the client suffered “some damage” as soon as he married his spouse because he “lost the legal right to unfettered ownership in his premarital property” that day without an effective antenuptial agreement. *Id.* at 338.

Similarly, in *Herrmann*, a law firm prepared an employee benefit pension plan and trust for the client, but allegedly failed to advise the client that the tax laws prohibited them from engaging in certain business transactions with the plan and trust. 590 N.W.2d at 642. The supreme court held that some damage occurred when the client engaged in the first prohibited transactions, which was a year after the law firm negligently failed to advise the client when preparing the pension plan and trust, but before the Internal Revenue Service notified the clients of their tax liability and interest. *Id.* at 642-44. The supreme court reasoned that, when the client engaged in the first prohibited transaction, it became “immediately liable” for the tax and could have commenced an action for legal malpractice that would have survived a motion to dismiss for failure to state a claim. *Id.* at 643-44.

Here, some damage accrued as early as November 7, 2014, when Klemp instructed Thomas to sign the cross-purchase agreement which allegedly failed to reflect the brothers’

oral agreement from the previous day. Thomas even admits that he suffered a “loss of legal right” on November 7, 2014, when Klemp also prepared a joint-membership certificate for Elizabeth and Robert as joint tenants for B&T Investments and the New Prague property. Like in *Antone*, Thomas lost his legal right to unfettered ownership of Robert’s share that day. 720 N.W.2d. 338. Because Thomas filed the malpractice claims more than six years after November 7, 2014, they are barred by the statute of limitations. The district court therefore did not err by dismissing these claims.

III. The district court did not abuse its discretion by granting the motion to strike Thomas’s December 9, 2022 filings.

Thomas argues that the district court abused its discretion by granting the motion to strike his December 9, 2022 filings. We disagree.

The district court has broad discretion in applying rule 115 of the Minnesota Rules of General Practice. *See* Minn. R. Gen. Prac. 115.06 (“For a dispositive motion, the court, in its discretion, may refuse to permit oral argument by the party not filing the required documents, may allow reasonable attorney[] fees, or may take other appropriate action.”); *Pfeiffer ex rel. Pfeiffer v. Allina Health Sys.*, 851 N.W.2d 626, 636 n.7 (Minn. App. 2014), *rev. denied* (Minn. Oct. 14, 2014). We review a district court’s enforcement of the rules of general practice for an abuse of discretion. *Id.*

Rule 115.03 allows a moving party to file a memorandum of law, the nonmoving party to file a response, and then the moving party to file a reply. However, the rule does not permit any further submissions after the reply. *See* Minn. R. Gen. Prac. 115.03.

Therefore, the district court did not abuse its discretion by granting the motion to strike Thomas's December 9, 2022 filings submitted after the reply.

IV. The district court did not abuse its discretion by denying the motion to compel discovery as moot.

Thomas asserts that the district court abused its discretion by denying the motion to compel discovery as moot. We are not persuaded.

We review a district court's denial of a motion to compel for an abuse of discretion. *Horodenski v. Lyndale Green Townhome Ass'n, Inc.*, 804 N.W.2d 366, 372 (Minn. App. 2011). Appellate courts follow a two-part test to determine whether a discovery request should be granted. *Rice v. Perl*, 320 N.W.2d, 407, 412 (Minn. 1982). We consider whether the requesting party (1) was "diligent in obtaining or seeking discovery" and (2) made the request "in a good-faith belief that material facts will be uncovered." *Id.* A material fact is one of such a nature as will affect the result or outcome of the case depending upon its resolution. *O'Malley*, 549 N.W.2d at 892. "[W]hen a decision on the merits is no longer necessary or an award of effective relief is no longer possible," the claim is moot and dismissal is appropriate. *Dean v. City of Winona*, 868 N.W.2d 1, 5 (Minn. 2015).

Here, having determined that all the claims are barred by the statute of limitations, Thomas could not have a good-faith belief that discovery would lead to any material facts that would affect the outcome of the case. The district court therefore did not abuse its discretion by denying the motion to compel.

V. The district court did not abuse its discretion by denying the motion for a continuance.

Thomas argues that the district court abused its discretion by denying the motion for a continuance because it failed to consider all the facts and circumstances surrounding the request. We are not convinced.

We review a district court's ruling on continuance motions for an abuse of discretion. *Torchwood Props., LLC v. McKinnon*, 784 N.W.2d 416, 418 (Minn. App. 2010). Thomas contends that the district court failed to "consider and balance (1) the degree of prejudice to the moving party; (2) prejudice to the nonmoving party; (3) the impact of a modification at that stage of the litigation; and (4) the degree of willfulness, bad faith, or inexcusable neglect by the nonmoving party." Thomas appears to rely on *Cotroneo v. Pilney* for this list of factors. 343 N.W.2d 647, 649 (Minn. 1984). However, *Cotroneo* addresses modification of a pretrial order under Minn. R. Civ. P. 16, which is a different issue. *Id.* As discussed in previous sections, a continuance here would not have changed the expiration of the statutes-of-limitations periods. The district court therefore did not abuse its discretion by denying the motion for a continuance.

Affirmed.