STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0303

Khan Turouk,
Appellant,

vs.

Nyawan Kuon Dak,
Respondent,

United States Department of Agriculture Rural Housing Services,
Respondent.

Filed October 9, 2023
Affirmed
Larkin, Judge

LeSueur County District Court
File No. 40-CV-22-692

Jacob M. Birkholz, Birkholz & Associates, Mankato, Minnesota (for appellant)

Michael P. Herrmann, Wornson Goggins, New Prague, Minnesota (for respondent)

Considered and decided by Wheelock, Presiding Judge; Larkin, Judge; and Halbrooks, Judge.*

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

NONPRECEDENTIAL OPINION

LARKIN, Judge

Appellant challenges the dismissal of his action to foreclose on a marital lien, arguing that the district court misapplied the doctrines of res judicata and collateral estoppel. We affirm.

FACTS

Appellant Khan Turuok[1] and respondent Nyawan Kuon Dak divorced in April 2016 pursuant to a stipulated dissolution decree. *Dak v. Turuok*, No. A21-0900, 2022 WL 1298145, at *1 (Minn. App. May 2, 2022), *rev. denied* (Minn. June 29, 2022). Dak was awarded the marital home, subject to a $31,950.32 lien in favor of Turuok. *Id.* The order establishing the lien stated that Dak would satisfy the lien "at the time of closing on the sale of the homestead, or at any time prior to closing." *Id.* The order also stated that Turuok's name must be removed from the mortgage by December 31, 2017, and if Dak failed to remove Turuok's name, she must sell the home. *Id.* Dak timely removed Turuok's name from the mortgage. *Id.*

Several years later, Turuok moved the district court to require Dak to: (1) remove his name from the mortgage,[2] (2) sell the home and pay him $31,950.32 plus judgment

[1] The case caption in district court identified appellant as "Turouk" rather than "Turuok." But appellant is identified as "Turuok" in his appellate brief. The caption of this opinion conforms to the caption used in the district court. *See* Minn. R. Civ. App. P. 143.01. But we use appellant's preferred name throughout the body of the opinion.

[2] It appears that Turuok believed Dak had not fully complied with the requirement to remove his name from the mortgage.

interest of 4% to satisfy his lien, or (3) refinance and remove his name "from all encumbrances against the real estate." *Id.*

Turuok argued that the parties had agreed to sell the home if it was not refinanced. The district court concluded that "no such agreement was memorialized" and denied Turuok's motion as an untimely and improper request to modify the marital property division. Turuok appealed, arguing that the district court erred by refusing to correct a "clerical error" and by refusing to reform or clarify the order setting forth his lien. *Id.*

This court rejected Turuok's argument that the order contained a clerical error:

> Here, any error is more than clerical. The parties' intent is not clear from the record. The record reflects that, at a hearing in May 2017, the parties contemplated Dak refinancing the home. But the operative order did not require Dak to refinance the home. Instead, it stated only that Turuok's name must be removed by December 31, 2017. And the record shows that the parties' attorneys engaged in some negotiation regarding the terminology used in the operative order. But the record contains no information resolving or explaining the apparent discrepancy between the May 2017 hearing and the written agreement that the parties memorialized in the operative order.

Id. at *2.

We also concluded that the district court did not err in declining to reform or clarify its order because Turuok's motion was untimely under Minn. Stat. § 518.145, subd. 2 (2020). *Id.* Finally, we addressed the merits of Turuok's claim:

> [E]ven if his request for relief could be considered timely, Minnesota law is clear that "a [district] court may not modify a final property division" except to "implement, enforce, or clarify the provisions of the decree, so long as it does not change the parties' substantive rights." *Nelson v. Nelson*, 806 N.W.2d 870, 871 (Minn. App. 1999) (quotation

> omitted). An order changes substantive rights when it increases or decreases the original division of marital property. *Hanson v. Hanson*, 379 N.W.2d 230, 233 (Minn. App. 1985). Here, to require Dak to sell the house and pay four percent interest on Turuok's lien, as Turuok requests, would decrease Dak's share of the property by depriving her of the home and forcing her to pay more than the agreed upon amended judgment lien amount. Similarly, such an arrangement would increase Turuok's share of the property by granting him more money than in the original agreement. And requiring Dak to refinance the home, as Turuok alternatively requests, changes her substantive rights by asking her to do something which the order does not require. Because granting Turuok's requested relief would impermissibly alter the final property division and the parties' substantive rights, we reject Turuok's arguments that the district court erred by failing to reform or clarify the order.

Id.

Turuok subsequently commenced a foreclosure action against Dak and respondent United States Department of Agriculture Rural Housing Services (USDA), arguing that he is entitled to foreclosure based on Dak's failure to satisfy the marital lien.

Dak moved to dismiss Turuok's foreclosure action on the grounds of res judicata and collateral estoppel. The district court granted Dak's motion and dismissed the foreclosure action. The district court reasoned that Turuok's foreclosure action and prior motion to force a sale or refinancing of the home were effectively the same cause of action.

Turuok appeals.

DECISION

Turuok argues that the district court erred by dismissing his foreclosure action on the grounds of res judicata and collateral estoppel. We begin with the doctrine of res judicata.

Res judicata, also known as claim preclusion, is a finality doctrine, which provides that there must be an end to litigation. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837, 840 (Minn. 2004). "Once there is an adjudication of a dispute between parties, res judicata prevents either party from relitigating claims arising from the original circumstances, even under new legal theories." *Id.* at 837. Consequently, "a plaintiff may not split his cause of action and bring successive suits involving the same set of factual circumstances." *Hauser v. Mealey*, 263 N.W.2d 803, 807 (Minn. 1978).

The applicability of res judicata is a question of law subject to de novo review. *Care Inst. v. County of Ramsey*, 612 N.W.2d 443, 446 (Minn. 2000). The elements of res judicata are that (1) the earlier cause of action involved the same set of factual circumstances; (2) the earlier cause of action or 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. *Hauschildt*, 686 N.W.2d at 840.

Here, the first element is satisfied. Turuok's present action is based on Minnesota's foreclosure statutes, Minn. Stat. §§ 581.01-.12 (2022), which govern the foreclosure of mortgages. His prior action sought to reopen and reform the dissolution judgment pursuant to Minn. Stat. § 518.145, subd. 2. *Dak*, 2022 WL 1298145, at *2. Although Turuok's legal theories are different, the same set of "operative facts" are at issue in both causes of action. *See Hauschildt*, 686 N.W.2d at 840 (quotation omitted) (analyzing what constitutes a claim or cause of action).

"A marital lien may be foreclosed as a mortgage under Minn. Stat. §§ 581.01-.12" under circumstances where "the original judgment does not expressly provide a different

means for enforcement." *Bakken v. Helgeson*, 785 N.W.2d 791, 795 (Minn. App. 2010). Turuok cited *Bakken* in opposing Dak's motion to dismiss, arguing that foreclosure is "authorized for marital liens in certain circumstances."

Although foreclosure of a marital lien is available to enforcement of a dissolution judgment, there must be a basis for a foreclosure. *See First Tr. Co. v. Leibman*, 445 N.W.2d 547, 550 (Minn. 1989) ("As noted by one commentator, the right of a lender to foreclose a mortgage begins upon default either in the debt or in a condition of the mortgage."). For example, in *Bakken*, a dissolution judgment granted wife "'a lien against [certain property] in the amount of Five thousand and 00/100 ($5,000.00) payable when the premises are sold.'" 785 N.W.2d at 793. Because the judgment did not expressly provide a means for enforcement, this court stated that wife's "lien may be foreclosed as a mortgage." *Id.* at 795. However, this court remanded for a determination whether there had been a sale that triggered the "duty to pay" the marital lien. *Id.* Similarly, in *Erickson v. Erickson*, another case cited by Turuok, this court concluded that the district court's characterization of a marital lien as a mortgage, for purposes of foreclosure, was proper because the appellant in that case had failed to make a good-faith effort to sell the property, as required by the divorce decree. 452 N.W.2d 253, 254-56 (Minn. App. 1990).

Here, there is no similar default or triggering event obligating Dak to satisfy Turuok's lien. This court has already determined that the only deadline applicable to the sale obligation in the dissolution judgment was Dak's obligation to remove Turuok's name from the mortgage on the home before December 21, 2017. *Dak*, 2022 WL 1298145, at *1. Dak satisfied that obligation. *Id.* Moreover, this court affirmed the district court's

refusal to reform or clarify the judgment in a way that would allow Turuok to force a sale of the home. *See id.* at *2 ("Because granting Turuok's requested relief would impermissibly alter the final property division and the parties' substantive rights, we reject Turuok's arguments that the district court erred by failing to reform or clarify the order.").

In sum, Turuok is once again asserting that he has a right to force a sale of Dak's home, even though this court has already determined that he does not have that right under the dissolution judgment. *Id.* We appreciate that Turuok's prior action presented a request for correction of a "clerical error" and reformation of the dissolution judgment and that this action presents a request for foreclosure, but nothing in the record indicates that the factual circumstances have changed. Turuok is once again attempting to force a sale of the marital home even though there is no basis to do so under the dissolution decree.

We do not discern why Turuok could not have raised the current foreclosure claim in his prior action. In *Erickson*, which involved an action to enforce the provisions of a divorce decree, the district court characterized the marital lien as a mortgage. 452 N.W.2d at 254. Based on *Erickson*, Turuok could have pursued his foreclosure theory when he sought to reform the dissolution judgment. "Under res judicata, a party is required to assert all alternative theories of recovery in the initial action." *Hauschildt*, 686 N.W.2d at 840 (quotation omitted).

The second element of res judicata is also satisfied because Dak and Turuok were parties in the earlier case. Turuok asserts that the parties are different because USDA is a party to this action, and it was not a party to the prior action. We are not persuaded that the addition of USDA—a mortgage holder—precludes application of res judicata in this

case, in which USDA is merely a mortgage lender and has no interest in the marital lien. Once again, no triggering event has occurred to justify foreclosure of the marital lien.

Moreover, in *State v. Joseph*, although the state was not a party to the prior proceeding, the supreme court determined that the parties were the same for purposes of res judicata because the state was in privity with a party in the prior litigation. 636 N.W.2d 322, 327 (Minn. 2001). While not directly on point, *Joseph* suggests that parties need not be identical. Indeed, parties are not permitted to relitigate a claim simply by adding an additional party. *See United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 249 (9th Cir. 1992) ("[T]he naming of additional parties does not eliminate the res judicata effect of a prior judgment so long as the judgment was rendered on the merits, the cause of action was the same and the party against whom the doctrine is asserted was a party to the former litigation.") (quotation omitted)).

As to the third and fourth elements of res judicata, Turuok does not meaningfully dispute that there was a final judgment on the merits in the prior matter, but he argues that he was not given a full and fair opportunity to litigate his foreclosure rights based on the marital lien. We disagree. As previously stated, Turuok could have raised his foreclosure argument in his prior action. Additionally, in the prior action, Turuok fully litigated his contention that Dak was required to sell the home and pay the marital lien under the terms of the dissolution judgment, and this court rejected that argument. *See Dak*, 2022 WL 1298145, at *2.

Res judicata is not to be "rigidly applied"; courts must focus on whether application of the doctrine would work an injustice on the party against whom it is applied. *Hauschildt*,

686 N.W.2d at 837. Here, the district court properly applied the doctrine of res judicata to bar Turuok's foreclosure action. There is no injustice because it is undisputed that no triggering event—under the dissolution decree as construed by this court—has occurred to justify foreclosure of his marital lien.

The district court also properly dismissed Turuok's foreclosure action on the grounds of collateral estoppel. Collateral estoppel, or issue preclusion, prohibits a party from relitigating an issue that was raised during prior proceedings. *Ellis v. Minneapolis Comm'n on Civ. Rts.*, 319 N.W.2d 702, 703-04 (Minn. 1982). The doctrine of collateral estoppel applies if: (1) the issue is identical to the one previously adjudicated; (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 issue. *Ill. Farmers Ins. Co. v. Reed*, 662 N.W.2d 529, 532-33 (Minn. 2003).

Whether collateral estoppel bars a party from litigating an issue presents a mixed question of law and fact. *Hauschildt*, 686 N.W.2d at 837. We review de novo a district court's determination as to the applicability of the doctrine. *Id.* Collateral estoppel should not be applied rigidly. *Id.* Instead, the appellate court should "focus . . . on whether [the] application would work an injustice on the party against whom the doctrines are urged." *Id.*

For the reasons stated above, collateral estoppel applies in this matter. The issue raised here—Dak's duty to pay Turuok's marital lien under the terms of the dissolution judgment—is the same issue that was litigated in Dak's previous action. The district court

found in the previous matter that Turuok's requested sale constituted an impermissible modification of the property division because there was no memorialized agreement for Dak to sell the property, and this court affirmed that decision. Additionally, in the prior matter, there was a final judgment on the merits, the substantive parties were the same, and Turuok was given a full and fair opportunity to be heard on the issue.

Affirmed.