STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1027

William P. Kaye,
d/b/a The Afton Tree Company, LLC,
Appellant,

vs.

S&S Tree Horticulture Specialists, Inc., et al.,
Respondents.

Filed May 12, 2009
Affirmed
Kalitowski, Judge

Washington County District Court
File No. C7-07-5896

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Considered and decided by Kalitowski, Presiding Judge; Lansing, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

KALITOWSKI, Judge

Appellant William P. Kaye, d/b/a The Afton Tree Company, LLC, contends that the district court erred in granting respondents' motion for summary judgment on the

ground that appellant's negligence claim was barred by the doctrine of res judicata. We affirm.

D E C I S I O N

In the spring of 2003, appellant hired respondents S&S Tree Horticulture Specialists, Inc. and David Swanson to spray spruce trees on appellant's tree farm. When appellant failed to pay respondents the invoice amount of $3,056.55, respondents obtained a judgment in that amount against appellant from the Washington County conciliation court. At the conciliation court hearing, appellant stated that it believed it had no obligation to pay respondents for services because respondents had not performed its services properly.

Appellant removed the case to the district court and the conciliation court judgment was vacated. The parties jointly filed an information statement with the district court in which appellant alleged that:

> [Respondents] did not provide the quality or quantity of spraying services that it had agreed to perform and that as a result of [respondents'] breach of contract and negligence [, appellant] has been damaged by loss of trees in an amount in excess of $50,000.00. [Appellant] intends to file a counterclaim describing the loss in detail.

In January 2005, the parties filed a joint statement of the case, in which appellant again asserted that respondents "negligently performed the services due under the contract." At a pretrial hearing on January 14, 2005, appellant requested leave to file a counterclaim against respondents. The district court denied this request. In April 2005, the parties entered into a mediated settlement agreement that stated that respondents

would accept $3,000 to settle the action. The settlement agreement provided in part that it "is made in full and complete settlement" of the conciliation court case and that it "does not settle any disputes that may arise between these parties not alleged" in the conciliation court file. Following the settlement agreement, the parties executed a stipulation for dismissal of the prior action. Pursuant to the stipulation, the district court ordered that the "action and the claims of [respondents] are hereby dismissed between the parties with prejudice."

More than two years later, in August 2007, appellant filed a complaint alleging that respondents were negligent in the spraying of appellant's trees. Respondents moved for summary judgment. The district court granted respondents' motion and dismissed appellant's complaint with prejudice on the ground that appellant's claim was barred by the doctrine of res judicata.

On appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in applying the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). "We review de novo whether the doctrine of res judicata can apply to a given set of facts." *Erickson v. Comm'r of Human Servs.*, 494 N.W.2d 58, 61 (Minn. App. 1992). If the doctrine applies, the decision whether to apply it is left to the discretion of the district court. *Id.*

Res judicata, also known as claim preclusion, is a finality doctrine that mandates that there be an end to litigation. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 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. Res judicata is not to be rigidly applied, instead the focus is on whether its application would work an injustice on the party against whom the doctrine is urged. *Id.*

Res judicata applies as an absolute bar to a subsequent claim when: (1) the earlier claim involved the same set of factual circumstances; (2) the earlier 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. *Id.* at 840.

Same set of factual circumstances

With regard to the first element, the Minnesota Supreme Court has explained that a party "may not split his cause of action and bring successive suits involving the same set of factual circumstances." *Id.* (quotation omitted). Central to the consideration of this element is the meaning of "claim" or "cause of action." *Id.* A claim or cause of action is a "group of operative facts giving rise to one or more bases for suing." *Id.* (quotation omitted). The two terms can be used interchangeably and therefore, the focus of res judicata is whether the second cause of action "arises out of the same set of *factual circumstances*." *Id.* (quotation omitted). The "common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions." *Id.* at 840-41 (quotation omitted). "[C]laims cannot be considered the same cause of action if the right to assert the second claim did not arise at the same time as the right to assert the first claim." *Id.* at 841 (quotation omitted).

Here, respondents brought a claim in conciliation court against appellant for nonpayment on the parties' contract for services rendered by respondents. During the

February 2004 conciliation court hearing on respondents' contract claim, appellant asserted respondents' negligence in performing the services as a defense to appellant's nonpayment. And subsequently when the action was removed to district court, the parties submitted a joint information statement in which appellant alleged that respondents failed to provide the "quality or quantity" of services required under the contract. In this statement, appellant indicated its intent to file a counterclaim for the alleged loss. The parties also submitted to the district court a joint statement of the case in which appellant alleged that respondents "negligently performed the services due under the contract."

Appellant's contention that the prior action was limited solely to respondents' breach-of-contract claim ignores the fact that appellant argued respondents' negligence as a defense throughout the conciliation court and district court litigation from 2003 through 2005. Both the prior and current actions are based on contractual obligations regarding appellant's failure to pay for respondents' tree-spraying services. And respondents' alleged negligence and the amount of appellant's resulting damages were among the facts at issue in the prior controversy. We conclude that appellant's current negligence action arises out of the same set of factual circumstances as the prior litigation and therefore, the first element of res judicata is satisfied.

Same parties or their privies

Both parties agree that the earlier claim involves the same parties as appellant's current claim, and thus, the second element is satisfied.

Final judgment on the merits

Appellant argues that the merits of its negligence claim were not fully or properly heard and that the merits of the prior case were solely related to respondents' breach-of-contract claim for the nonpayment of services rendered. We disagree.

"A judgment based on a settlement agreement is a final judgment on the merits, but only with respect to those issues and claims actually settled." *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 736 n.1 (Minn. App. 1995), *review denied* (Minn. Sept. 8, 1995). And a "judgment on the merits constitutes an absolute bar to a second suit for the same cause of action, and is conclusive between parties and privies, not only as to every matter which was actually litigated, but also as to every matter which might have been litigated therein." *Youngstown Mines Corp. v. Prout*, 266 Minn. 450, 466, 124 N.W.2d 328, 340 (1963) (quotation omitted).

The record shows that respondents' alleged negligence was an essential part of the 2003 through 2005 litigation. Appellant repeatedly asserted respondents' negligence in its defense of nonpayment in the 2003 through 2005 litigation. And in January 2005, the district court denied appellant's request to file a counterclaim for negligence. In June 2005, pursuant to the parties' stipulation, the district court ordered that "the action and the claims of [respondents] are hereby dismissed between the parties with prejudice . . . and judgment may be entered accordingly."

The district court's denial of appellant's request to file a counterclaim for negligence is part and parcel of the prior action that was subsequently dismissed with prejudice pursuant to the parties' voluntary stipulation. Thus the district court's order

dismissing the action with prejudice constitutes a final judgment on the merits of appellant's negligence claim. We therefore reject appellant's argument that the merits of the prior case solely related to respondents' breach-of-contract claim.

Appellant argues that the issues of respondents' negligence and damages were never part of the merits of the prior 2003 through 2005 case because: (1) negligence and damages were never formally pleaded in writing; (2) no depositions or discovery were conducted regarding negligence and damages; (3) no written motions were filed alleging a counterclaim for negligence; and (4) appellant only made a "mere oral request at a scheduling conference three months before trial."

But Minn. R. Civ. P. 7.02(a) requires that motions be in writing "unless made during a hearing or trial." Here, appellant made a motion during a pretrial hearing to amend its pleading to add a counterclaim and this motion was valid pursuant to the rules of civil procedure. Moreover, "[t]he denial of a motion to amend a complaint in one action is a final judgment on the merits barring the same complaint in a later action," and this is so even when denial of leave is based on procedural reasons other than the merits of the case. *Prof'l Mgmt. Assocs., Inc. v. KPMG LLP*, 345 F.3d 1030, 1032 (8th Cir. 2003) (citations omitted). Thus, we conclude that the district court's denial of appellant's motion to bring a counterclaim for negligence constitutes a final judgment on the merits of that counterclaim.

Appellant also argues that the parties' settlement agreement indicates that the merits of the prior suit extended only to respondents' $3,000 claim. But the parties' settlement agreement was made "in full and complete settlement" of the conciliation

court case. And appellant raised respondents' negligence in the conciliation court case. Moreover, neither the parties' joint stipulation for dismissal of the prior action, nor the judgment entered by the district court, reserved appellant's right to bring a counterclaim; nor did appellant request such a reservation from the scope of judgment. *See Zontelli v. Smead Mfg.*, 343 N.W.2d 639, 641 (Minn. 1984) ("A judgment that expressly reserves from its operation specific rights or specific issues for decision is not a bar to a subsequent proceeding on the matters reserved."). Therefore, the district court's final judgment incorporated its previous denial of appellant's counterclaim.

Full and fair opportunity to litigate

Appellant argues that it lacked a full and fair opportunity to litigate the matter because its own "mere oral request" for leave to amend the counterclaim is, in effect, a "non-motion," and is in direct violation of the motion practice rules. We disagree.

> 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.

State v. Joseph, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted).

Appellant's argument focuses on its failure to file written motions or pleadings and its failure to conduct discovery on its negligence claim. But the record indicates that there were no significant procedural limitations placed on appellant by the conciliation court or the district court that prevented appellant from bringing its counterclaim prior to the pretrial hearing. The record indicates that appellant took no action except to bring

this negligence claim two years after the district court entered judgment dismissing the prior action. Moreover, appellant's "mere oral request" asserted during a pretrial hearing was a valid method of raising the issue of respondents' negligence. *See* Minn. R. Civ. P. 7.02(a) (requiring motions to be in writing unless made during a hearing or trial).

We thus conclude that the district court's denial of appellant's request for leave to file a counterclaim did not deny appellant a full and fair opportunity to litigate its counterclaim in the prior action. Thus, the fourth element of res judicata is satisfied.

Appellant argues that even if the four elements for res judicata are present here, it was an abuse of discretion for the district court to apply res judicata. Specifically, appellant argues that it is being "unfairly penalize[d]" by the application of res judicata because the settlement agreement and stipulation for dismissal contradicts the parties' intent. We disagree.

Res judicata is not rigidly applied. *Hauschildt*, 686 N.W.2d at 837. If the doctrine of res judicata applies, the decision whether to actually apply it is left to the discretion of the district court. *Erickson*, 494 N.W.2d at 61. Because res judicata is a flexible doctrine, the focus is on whether its application would work an injustice on the party against whom estoppel is urged. *Hauschildt*, 686 N.W.2d at 837. The application of res judicata is typically "qualified or rejected when [its] application would contravene an overriding public policy." *Erickson*, 494 N.W.2d at 61 (quotation omitted).

Here, because all four res judicata elements are satisfied, we consider whether the application of res judicata contravenes an overriding public policy.

We conclude that the district court's application of res judicata did not work an injustice on appellant, nor did it violate an overriding public policy because appellant (1) was aware of its negligence counterclaim from the beginning of the litigation in 2003; (2) repeatedly asserted respondents' negligence as an affirmative defense; and (3) had multiple opportunities to prevent its claim from being barred. Therefore, on these facts, the district court did not abuse its discretion in applying res judicata.

Affirmed.