

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

TAYLOR L. REYNOLDS; AND CONNIE
B. EVANS,
Appellants,
vs.
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, ITS SUCCESSORS
AND/OR ASSIGNS,
Respondent.

No. 68376

FILED

APR 19 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting judgment on the pleadings in a real property action.¹ First Judicial District Court, Carson City; James E. Wilson, Judge.

After a foreclosure sale of appellants' property, appellants filed suit against respondent, who had obtained title to the property from the party that purchased it at the foreclosure sale. Specifically, appellants sought declaratory relief that respondent did not have ownership rights to the property and to cancel the deed of trust giving respondent ownership. Appellants also brought claims for slander of title based upon the recordation of the deed upon the trustee's sale and requested attorney fees associated with that claim.² All of these claims were based on appellants'

¹Our preliminary review of the documents submitted on appeal revealed a potential jurisdictional defect and, thus, this court directed appellants to show cause why this appeal should not be dismissed for lack of jurisdiction. Having reviewed appellants' response and respondent's reply, we conclude that jurisdiction is properly vested in this court.

²Another claim for relief made by appellants was dismissed by the district court and that dismissal is not challenged on appeal.

argument that the holder of the note and deed of trust at the time of the foreclosure sale never properly transferred the property and thus, respondent did not have proper ownership of the property.

After filing an answer to the claims, respondent filed a motion for judgment on the pleadings. In that motion, respondent asserted that appellants' claims were barred by claim preclusion. In support of that argument, respondent sought to have the court take judicial notice of a complaint appellants filed in the United States District Court for the District of Nevada and an order granting respondent summary judgment on the claims brought in that action. The court granted respondent's motion for judicial notice and, based on the federal court documents, found that appellants' claims were barred.³ This appeal followed.

Claim preclusion is appropriately applied when "(1) the same parties or their privies are involved in both cases, (2) a valid final judgment has been entered, and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. ___, ___, 321 P.3d 912, 915 (2014) (quoting *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008)). As discussed below, we conclude the district court did not err in granting judgment on the pleadings in favor of respondent based on its finding that appellants'

³While appellants challenge the district court's use of judicial notice, they only do so in regard to certain foreclosure documents, not the federal court documents. Thus, appellants have waived any challenge to the district court's decision to take judicial notice of the federal court documents. See *Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) ("Issues not raised in an appellant's opening brief are deemed waived.").

claims were barred by claim preclusion. *See Lawrence v. Clark Cty.*, 127 Nev. 390, 393, 254 P.3d 606, 608 (2011) (providing that judgment on the pleadings is proper when “the material facts are not in dispute and the moving party is entitled to judgment as a matter of law,” thus, questions of law are reviewed de novo); *see also G.C. Wallace, Inc. v. Eighth Judicial Dist. Court*, 127 Nev. 701, 705, 262 P.3d 1135, 1137 (2011) (stating that whether claim preclusion applies is a question of law).

In the federal case, both appellants and respondent were parties to the action, satisfying the first element of claim preclusion. Additionally, the federal court entered a valid final order granting summary judgment in favor of respondent, finding that the foreclosure was not defective and denying appellants’ request to quiet title, thereby satisfying the second element. Finally, appellants’ claims in the federal case stem from their assertions that the owner of the property at the time of the foreclosure had already assigned away its rights, and, therefore, the foreclosure it conducted could not transfer any ownership to respondent—which is identical to the stated basis for the claims made in the Nevada district court. Thus, even though the actual claims for relief brought in the underlying case are different from the claims raised in the federal case, the claims raised in the district court could have been brought in the first case, meeting the third element of claim preclusion. *See Alcantara*, 130 Nev. at ___, 321 P.3d at 915; *see also Weddell v. Sharp*, 131 Nev. ___, ___, 350 P.3d 80, 85 (2015) (providing that claim preclusion bars a second “suit that is based on the same set of facts that were present in the initial suit” (quoting *Five Star*, 124 Nev. at 1054, 194 P.3d at 712)). Accordingly, because all the elements for claim preclusion are met, the district court properly applied claim preclusion to bar the claims at issue in this matter.

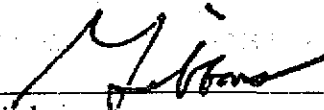
In an effort to avoid the application of claim preclusion to their underlying claims, appellants argue that, because the district court had previously denied respondent's claim-preclusion-based motion to dismiss, respondent could not raise this argument again in its subsequent motion for judgment on the pleadings. But as respondent points out, the district court's denial of the motion to dismiss was based solely on the fact that respondent had not provided certified copies of the federal district court documents in support of its motion, and not based on a substantive review of the claim preclusion issue.

Appellants have cited no caselaw that supports their argument that NRCP 12(b)'s requirement that every defense "shall be asserted in the responsive pleading" somehow prohibits a party from reasserting a timely raised defense that was previously raised in a motion to dismiss that had been denied on procedural grounds. Moreover, a plain reading of NRCP 12 does not support appellants' position on this issue. See *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 228, 209 P.3d 766, 769 (2009) (providing that appellate courts are to effectuate a statute's plain meaning); see also *Vanguard Piping Sys., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 309 P.3d 1017, 1020 (2013) ("Nevada's Rules of Civil Procedure are subject to the same rules of interpretation as statutes."). Indeed, there is nothing in that rule that could be viewed as barring the reassertion of a defense that was initially timely raised in a motion to dismiss that was denied under the circumstances presented here. Therefore, the district court's initial denial of the motion to dismiss on procedural grounds did not prevent respondent

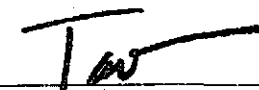
from reasserting the claim preclusion argument in the motion for judgment on the pleadings.⁴

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court AFFIRMED.⁵



Gibbons C.J.



Tao J.



Silver J.

cc: Hon. James E. Wilson, District Judge
Wm. Patterson Cashill, Settlement Judge
Terry J. Thomas
Aldridge Pite, LLP
Carson City Clerk

⁴Appellants also briefly argue that law of the case should apply such that the district court's initial refusal to apply claim preclusion cannot be overturned, even by the district court itself. This argument fails, however, because law of the case only applies when an appellate court has decided an issue. *See Dictor v. Creative Mgmt. Servs., LLC*, 126 Nev. 41, 44, 223 P.3d 332, 334 (2010) ("The law-of-the-case doctrine provides that when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case.").

⁵Because we affirm the district court's finding that claim preclusion bars all of appellants' claims in this case, we need not address appellants' remaining arguments.