IN THE COURT OF APPEALS OF THE STATE OF NEVADA

WAYNE D. CONTE,
Appellant,
vs.
JESUSA E. CONTE,
Respondent.

No. 78972-COA

ORDER OF AFFIRMANCE

Wayne D. Conte appeals from a district court order of dismissal in a civil action. Eighth Judicial District Court, Clark County; Jacqueline M. Bluth, Judge.[1]

Wayne and respondent Jesusa Conte were married in August 1986 and were subsequently divorced by way of a decree of divorce entered in September 2012. In the proceedings below, Wayne filed suit against Jesusa in September 2018, asserting fraud, forgery, and intentional infliction of emotional distress. Specifically, Wayne alleged that Jesusa fraudulently obtained the parties' marriage certificate, such that the marriage was void and should have been annulled, rather than a divorce decree being entered. Additionally, Wayne asserted that he suffered damages from this alleged conduct based on the decree of divorce awarding Jesusa a portion of the community property and alimony. Ultimately, the district court dismissed Wayne's complaint based on res judicata. This appeal followed.

[1]The Honorable James Bixler presided over the hearing at issue in this matter, but the Honorable Jacqueline M. Bluth signed the written order.

On appeal, Wayne challenges the district court's dismissal of his complaint based on res judicata. Specifically, Wayne contends that the matter is not barred by res judicata because the documents he provided "were never heard." This court reviews a district court's order granting a motion to dismiss de novo. *Munda v. Summerlin Life & Health Ins. Co.*, 127 Nev. 918, 923, 267 P.3d 771, 774 (2011).

Here, the district court concluded that the allegations raised in Wayne's complaint were already presented in the divorce action and that Wayne failed to appeal that determination. Additionally, Wayne raised the same claims in two separate federal court actions, which were both dismissed. Therefore, the court concluded, his claims were barred by the doctrine of res judicata. As an initial matter, we note that the Nevada Supreme Court has abandoned the catchall term "res judicata" in favor of the terms "claim preclusion" and "issue preclusion" and has articulated separate rules for applying each of these separate doctrines. *See Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1051-56, 194 P.3d 709, 711-14 (2008), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). Applying these terms and rules to the instant matter, we conclude that the district determined that Wayne's complaint was barred by claim preclusion. And for the reasons set forth below, we affirm that determination.

Claim preclusion applies when: "(1) there has been a valid, final judgment in a previous action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit, *or* the defendant can demonstrate that he or she should have been included as a defendant in the earlier suit and the plaintiff fails to provide a 'good reason' for not having

done so." *Weddell*, 131 Nev. at 235, 350 P.3d at 81. This court reviews a district court's conclusion as to whether claim or issue preclusion applies de novo. *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014).

As noted above, on appeal, Wayne only contends this matter is not barred by preclusion principles because the documents he provided "were never heard," which goes to factor two of the claim preclusion test—whether this action "is based on the same claims or any part of them that were or could have been brought in the first action." *Weddell*, 131 Nev. at 235, 350 P.3d at 81. But our review of the record indicates that Wayne effectively conceded that the allegations raised in his complaint could have been raised the divorce proceeding. Indeed, Wayne asserts that he raised these same allegations in the divorce proceedings, but he contends that the district court refused to consider the evidence allegedly supporting those claims.

Moreover, Wayne fails to assert factors one and three of the claim preclusion test were not met, and thus he has waived any challenge as to these factors. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (noting that if a matter is not raised on appeal, it is considered waived). Regardless, we note that the decree was a valid, final judgment and the parties are the same as they were in the divorce proceeding. Thus, all three factors of the claim preclusion test were met.

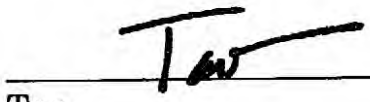
Because, as discussed above, Wayne has effectively conceded that all of the factors regarding claim preclusion apply, we necessarily conclude that claim preclusion bars his complaint. *See Munda*, 127 Nev. at 923, 267 P.3d at 774. Therefore, we cannot say the district court erred in

dismissing Wayne's complaint on this basis. *See Alcantara*, 130 Nev. at 256, 321 P.3d at 914; *Weddell*, 131 Nev. at 235, 350 P.3d at 81.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[2]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Jacqueline M. Bluth, District Judge
Wayne D. Conte
Willick Law Group
Eighth District Court Clerk

[2]Insofar as Wayne raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.