


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

SAEID KANGARLOU,
Appellant,
vs.
ALI KAZIM; AND TANIA KAZIM,
Respondents.

No. 85829-COA

FILED

MAY 28 2024

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Saeid Kangarlou appeals from a district court order dismissing his claim in a landlord-tenant dispute. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

In April 2020, Kangarlou entered into a verbal agreement with respondents Ali and Tania Kazim (collectively, the Kazims) to rent a room in their house in Las Vegas.¹ The parties agreed that Kangarlou would pay \$550 per month, plus an initial \$150 cleaning deposit. Either party could terminate the agreement, so long as they provided the other party with 30 days' notice. Kangarlou paid the first month's rent, along with the cleaning deposit, and moved into the room on May 1.

Early the next morning, Kangarlou discovered what he believed to be bed bugs on his body, in his bedding, and on the walls and carpet of the room. Kangarlou immediately informed the Kazims, who in turn hired an exterminator to inspect the bugs. The exterminator confirmed that the bugs were bed bugs and estimated that the infestation was between four and six months old. At the request of the Kazims, Kangarlou agreed to sleep

¹We do not recount the facts except as necessary to our disposition. We note that the facts in this case are drawn from Kangarlou's complaint in the district court, as the Kazims have yet to file an answer and the parties have not conducted discovery.

on a couch in the house's living room while they dealt with the infestation; in return, Kangarlou was to be credited with one day's rent for each night he spent on the couch. Kangarlou stayed in the living room for two weeks and allegedly, as a result of sleeping on the couch, sustained nerve damage that caused pain in his back, neck, and leg. Kangarlou was also allegedly exposed to the pesticides being used on the bed bugs while he stayed in the living room.

After the Kazims completed treating the infestation, Kangarlou moved back into the room around May 16. The following day, Tania allegedly began making derogatory and discriminatory comments toward Kangarlou and demanded he immediately move out. After Kangarlou refused, the Kazims turned off the air conditioning in Kangarlou's room, which allegedly caused him medical complications due to his asthma, heart disease, and sleep apnea. On May 27, Kangarlou began experiencing chest pain and dizziness and called 9-1-1. An ambulance transported Kangarlou from the Kazims' house to an emergency room, where Kangarlou was treated and incurred medical bills in excess of \$30,000. While Kangarlou was hospitalized, the Kazims entered his room and began packing his "protected property," legal documents, and medication. After Kangarlou was discharged from the hospital, the Kazims denied Kangarlou access to their house and his belongings.

Kangarlou filed a motion to retrieve personal items and a complaint for relief under NRS 118A.390² in the Las Vegas Justice Court. In his complaint, Kangarlou requested expedited relief alleging that the Kazims denied him access to retrieve his property and made his living

²NRS 118A.390 provides relief for the unlawful removal or exclusion of, or the interruption of essential services to, a tenant.

conditions “unbearable” by turning off the air conditioning. He sought \$16,800 in damages for rent, spoiled food, medical bills, and “pain and suffering, distress, breach of contract[,] etc.” The justice court held a hearing on Kangarlou’s motion and claim for expedited relief.³ Because Kangarlou had retrieved his property since the filing of his motion, the justice court dismissed his motion to retrieve essential items as moot. As for Kangarlou’s request for expedited relief, the justice court found for Kangarlou in the amount of \$550—one month’s rent. Kangarlou later alleged that, during the hearing, the justice court directed him to “seek damages in a different forum,” and specifically suggested small claims court.

In May 2020, Kangarlou filed a complaint against the Kazims in the Eighth Judicial District Court, alleging breach of contract, intentional misrepresentation, unlawful eviction, civil conspiracy, and invasion of privacy. The Kazims moved to dismiss the complaint under NRCPC 12(b)(5) arguing, among other things, that Kangarlou’s claims were barred by claim preclusion. The district court granted the Kazims’ motion, finding that Kangarlou’s prior actions in the justice court provided Kangarlou with the opportunity to litigate his claims and therefore barred his current complaint pursuant to the doctrine of claim preclusion. This appeal followed.

³We note that at oral argument, counsel for the Kazims stated that the justice court held separate hearings for Kangarlou’s motion to retrieve personal items and his complaint for expedited relief. However, the minutes of the justice court’s hearing states that the court called the matters “in tandem” at a single hearing. We also note that Kangarlou filed a motion for reconsideration in the justice court, which the justice court summarily denied without a hearing.

On appeal, Kangarlou raises several issues. First, he primarily argues that the justice court expressly reserved his right to bring his subsequent claims in the district court. Kangarlou relies on his declaration attached to his opposition to the Kazims' motion to dismiss, in which he stated that, during a hearing on his motions, the justice court "directed [him] to seek any damages in a different forum." Therefore, Kangarlou contends that claim preclusion did not bar him from bringing his claims in district court. Second, Kangarlou argues that the justice court's order was not final for the purposes of claim preclusion because the record suggests that, while the justice court reimbursed Kangarlou for lost rent, it dismissed his claims for further damages on jurisdictional grounds. Third, Kangarlou argues that the justice court's order was not final for the purposes of claim preclusion because not all of the allegations set forth in Kangarlou's complaint were actually litigated. Fourth, Kangarlou argues that the public policy underlying claim preclusion suggests that the doctrine should not apply in this case. The Kazims respond that, first, the statement offered by Kangarlou did not expressly reserve his right to bring his subsequent claims, and that it was merely a hearsay statement that could not have been binding upon the district court. The Kazims further respond that the district court properly found that claim preclusion applied because Kangarlou's claims involved the same parties and regarded the same facts. Finally, the Kazims argue that Kangarlou failed to preserve his arguments as to the validity and finality of the justice court's order in the district court, and therefore has waived his right to raise those issues on appeal.⁴

⁴We reject this argument insofar as our review of the record reveals that Kangarlou raised both issues in the district court in his opposition to the Kazims' motion to dismiss.

In reviewing an order granting relief under NRCP 12(b)(5), we accept all the nonmoving party's "factual allegations as true and draw every reasonable inference in the[ir] favor." *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). However, if a district court "considered matters outside the pleadings in granting [an] NRCP 12(b)(5) motion to dismiss," we will treat the order as an order granting summary judgment. *Coty v. Washoe County*, 108 Nev. 757, 759, 839 P.2d 97, 98 (1992). We review a district court's order granting summary judgment de novo, and view "the evidence, and any reasonable inferences drawn from it, . . . in a light most favorable to the nonmoving party." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCP 56(a). "A[] [dispute] of material fact is genuine when the evidence is such that a rational jury could return a verdict in favor of the nonmoving party." *George L. Brown Ins. v. Star Ins. Co.*, 126 Nev. 316, 323, 237 P.3d 92, 96 (2010).

Further, we review a district court's finding of claim preclusion de novo. *Alcantara*, 130 Nev. at 256, 321 P.3d at 914. Under the doctrine of claim preclusion, "a valid and final judgment on a claim precludes a second action on that claim or any part of it." *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1052-53, 194 P.3d 709, 712 (2008) (quoting *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 114 Nev. 823, 835, 963 P.2d 465, 473 (1998)), *holding modified by Weddell v. Sharp*, 131 Nev. 233, 235, 350 P.3d 80, 81 (2015). Claim preclusion "applies when (1) the parties or their privies are the same, (2) the final judgment is valid, 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.” *Holland v. Anthony L. Barney, Ltd.*, 139 Nev., Adv. Op. 49, 540 P.3d 1074, 1084 (Ct. App. 2023) (quoting *Five Star*, 124 Nev. at 1054, 194 P.3d at 713).

In this case, we generally agree with the Kazims that the doctrine of claim preclusion applies. First, it is undisputed that the parties are the same in both the justice court and the district court cases. *See id.* Second, the justice court entered a final, valid judgment on Kangarlou’s complaint for expedited relief. *Id.* Finally, Kangarlou recognizes in his briefing that his district court action appears to have been brought based on the same claims, or part of those claims, that he initially brought in justice court. *Id.*

However, notwithstanding the applicability of the claim preclusion doctrine, under the Restatement (Second) of Judgments § 26(1)(b) (Am. L. Inst. 1982), a plaintiff may bring a subsequent claim that would otherwise have been barred by claim preclusion if the “court in the first action expressly reserved the plaintiff’s right to maintain the second action.” The Nevada Supreme Court recognized this exception to claim preclusion in *Holt v. Regional Trust Services Corp.*, 127 Nev. 886, 894-95, 266 P.3d 602, 607-08 (2011). There, a lender failed to participate in a mandatory Foreclosure Mediation Program (FMP) mediation, and in turn, the district court issued an order denying the FMP certificate needed to effectuate foreclosure and imposed sanctions on the lender. *Id.* At a hearing on the matter, the district court orally explained that, while it was not issuing the FMP certificate and was imposing sanctions, the lender would be able to “restart the [foreclosure] process.” *Id.* at 889, 266 P.3d at 604. When the lender subsequently restarted the foreclosure process, the borrowers moved for injunctive relief, arguing that the lender’s subsequent


foreclosure efforts were barred under claim preclusion. *Id.* The district court rejected the lender's request and the supreme court affirmed on appeal, explaining that the original district court's express statement that the lender "could restart the foreclosure process" preserved the lender's right to subsequently reinitiate foreclosure proceedings, even if the proceedings would have otherwise been barred by claim preclusion. *Id.*


In light of the supreme court's adoption of this exception to the doctrine of claim preclusion in *Holt*, we conclude that the district court erred in finding that the justice court's statement, as set forth in Kangarlou's declaration, held no weight in the district court's determination of whether claim preclusion barred Kangarlou's subsequent claims. *Id.* at 894-95, 266 P.3d at 607-08. We further conclude that if the justice court, in fact, made a statement directing Kangarlou to "seek any damages in a different forum," such statement would have expressly reserved Kangarlou's right to bring his subsequent action such that his claims may proceed in the district court on remand. *Id.* Therefore, the district court erred as a matter of law when it disregarded evidence of the justice court's express reservation of Kangarlou's rights and dismissed his complaint based on claim preclusion.


Indeed, we observe that the justice court's directive instructing Kangarlou to seek damages in a different forum comports with the Justice Court Rules of Civil Procedure because the summary eviction court could not have considered any of Kangarlou's claims outside of his request for expedited relief under NRS 118A.390. *See* JCRCP 2 (stating that, in the justice court, summary eviction actions are governed by different rules than civil and small claims actions); *cf. G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct.*, 127 Nev. 701, 709, 262 P.3d 1135, 1140 (2011) (holding that, because of the unique nature of summary eviction actions, summary eviction

proceedings under NRS Chapter 40 do not preclude a party's additional claims for damages arising out of the eviction). However, insofar as the summary eviction court awarded Kangarlou damages for lost rent, we conclude that he may not pursue those damages on remand. Accordingly, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁵


_____, J.
Bulla


_____, C.J.
Gibbons


_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. XIV
Ocampo Wiseman Law
Pintar Albiston LLP
Eighth District Court Clerk

⁵Based on our disposition, we need not address Kangarlou's assertion that the district court's application of claim preclusion should be reversed on public policy grounds. See *Engelson v. Dignity Health*, 139 Nev., Adv. Op. 58, 542 P.3d 430, 446 n.14 (Ct. App. 2023) (explaining that this court need not address issues that are unnecessary to resolve the case at bar). Further, to the extent that Kangarlou raises other arguments that are not addressed herein, we have considered the same and conclude they do not present a basis for further relief.