IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LISA J. GIBSON,
Appellant,
vs.
THOMAS J. GIBSON,
Respondent.

No. 87203-COA

ORDER OF AFFIRMANCE

Lisa J. Gibson appeals from a district court post-judgment order awarding interpleaded funds. Eighth Judicial District Court, Family Division, Clark County; Stacy Michelle Rocheleau, Judge.

Lisa and respondent Thomas J. Gibson were divorced in 2003. For the next two decades, they litigated in state and federal courts over the amount Thomas owed Lisa.[1] Judgments were entered in 2008 and 2009 that increased the amount Thomas owed Lisa. Ultimately, in June 2015, the district court consolidated the judgments, finding Thomas owed Lisa about $275,000.

Before entry of the 2015 judgment, Thomas filed for bankruptcy under Chapter 13, which stayed all collections against him. He proposed a plan to the Chapter 13 trustee that would require him to pay $2,200 a month plus a yearly lump sum of $25,000 for five years. He paid the monthly installment for around two years, accumulating roughly $44,000 for anticipated future payments to creditors. In 2014, the bankruptcy proceeding was converted to a Chapter 7 proceeding, and Lisa and Thomas thereafter contested ownership of that money. In 2017, the bankruptcy court ordered the trustee to deposit the funds to the Office of the Ex-Officio

[1]We recount the facts only as necessary for our disposition.

Constable and allowed Lisa to issue a writ of garnishment against the trustee.

Lisa attempted to collect that money by obtaining writs of garnishment and execution from the district court. However, because of multiple delays, including Lisa's collection attorney filing a lien for attorney fees against the funds, Lisa was unable to collect pursuant to those writs. In June 2021, the 2015 judgment against Thomas expired because Lisa failed to file a timely affidavit of renewal. *See Gibson v. Gibson*, No. 84011, 2023 WL 3993183, *1 (Nev. June 13, 2023) (Order of Affirmance) (upholding the district court's finding of expiration).

Lisa's attorney then filed an interpleader action to determine who had legal rights to the $44,000. The district court, in a 2023 order, determined that Thomas is entitled to those funds and that Lisa has no right to the money since her judgment has expired. The district court accordingly ordered the funds disbursed to Thomas. This appeal followed.

First, Lisa argues that ownership of the money was already decided by the bankruptcy court. Thus, she argues, the district court disregarded the preclusive effect[2] of the 2017 bankruptcy court order which allowed her to file a writ of garnishment and failed to give full faith and credit to that order. Thomas responds that the bankruptcy court never awarded Lisa the funds and there was no preclusive effect. Specifically, res

[2]Lisa uses the term "res judicata" in her brief but claim and issue preclusion have superseded that term. *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1051, 194 P.3d 709, 711 (2008). Prior Nevada caselaw describes claim and issue preclusion as "two different species of res judicata." *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 598, 879 P.2d 1180, 1191 (1994); *see also Holland v. Anthony L. Barney, Ltd.*, 139 Nev., Adv. Op. 49, 540 P.3d 1074, 1082 n.12 (Ct. App. 2023).

judicata did not apply, and issue preclusion to the extent she means issue preclusion when she argues res judicata, also did not apply, and that the district court correctly ordered the funds to be disbursed to him.

This court reviews a district court decision concerning divorce proceedings for an abuse of discretion. *Williams v. Williams*, 120 Nev. 559, 566, 97 P.3d 1124, 1129 (2004); *see also Schwartz v. Schwartz*, 126 Nev. 87, 90, 225 P.3d 1273, 1275 (2010) (reviewing a district court division of marital property for an abuse of discretion). However, a district court's decision to apply claim or issue preclusion is reviewed de novo. *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). Moreover, "[t]he district court has inherent authority to interpret and enforce its decrees." *Byrd v. Byrd*, 137 Nev. 587, 590, 501 P.3d 458, 462 (Ct. App. 2021); *see also* NRS 125.240 ("The final judgment and any order made before or after judgment may be enforced by the court by such order as it deems necessary.").

Claim preclusion consists of three elements: (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) (citing *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1054, 194 P.3d 709, 713 (2008)). Lisa vaguely argues that the elements are satisfied because the bankruptcy court allowed a writ of garnishment to proceed and ordered the funds to be held by a third party.

However, even assuming claim preclusion has any application, element three was not satisfied because the current claim is not the same claim and could not have been brought in the bankruptcy proceedings. *See Holland*, 139 Nev., Adv Op. 49, 540 P.3d at 1086 (a party's claim could not

have been brought in the original bankruptcy action because the alleged events occurred after the proceedings concluded). Specifically, Thomas was unable to assert that the funds were his in 2017, as the 2015 judgment had not yet expired. Thomas advanced the new claim once the Nevada Supreme Court concluded the judgment had expired and Lisa had no remaining right to collect on the judgment. Lisa provides no authority that claim preclusion applies under these circumstances, and we need not consider it further. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that this court need not consider arguments on appeal that are either not cogently argued or lack the support of relevant authority). Thus, claim preclusion does not apply.

We now consider issue preclusion, which has four elements: (1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated. *Five Star*, 124 Nev. at 1055, 194 P.3d at 713. To satisfy the first element, the issue raised in the current case must be identical to, or necessary and derivative of, an issue in the prior litigation. *Alcantara*, 130 Nev. at 258-59, 321 P.3d at 916-17. Overlapping but distinct issues are not sufficient. *See Hardwick v. County of Orange*, 980 F.3d 733, 742 (9th Cir. 2020) (holding that a mother's and child's claims of family association were not identical because each required different findings in their respective jury trials). Further, "the identical issue requirement addresses whether identical *factual allegations* are at stake in the two proceedings, not whether the ultimate issues or dispositions are the same." *Id.* at 740 (emphasis added) (internal quotation marks omitted).

Here, the issues underlying the 2017 bankruptcy order and the 2023 order disbursing funds are not identical. The 2017 bankruptcy court order concluded that the trustee must give the money to the Ex-Officio Constable and gave Lisa an opportunity to seek a writ of garnishment against the trustee. Following entry of the 2017 bankruptcy court order, the money was transferred to the Ex-Officio Constable, and Lisa obtained the writ of garnishment against the trustee. The Nevada Supreme Court subsequently affirmed that Lisa's 2015 judgment—the judgment which was the basis for the collection on the $44,000 in the first place—had expired. *See* NRS 11.190(1). The district court then entered the 2023 order directing the funds to be disbursed to Thomas. Accordingly, both orders considered new and different facts and legal questions, and Lisa provides no authority demonstrating the issues are identical. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Thus, issue preclusion does not apply.

Further, the order of the bankruptcy court allowed Lisa to file a writ of garnishment against the trustee, but it did not grant her any other rights. She filed the writ of garnishment against the trustee, and she subsequently filed a writ of execution to collect the money in the district court. The district court concluded that she had the right to those funds under the 2015 judgment, but it found that the 2015 judgment had expired and the only other person who had a right to the money was Thomas. Thus, the district court did not fail to apply preclusive effect or fail to give full faith and credit to the order of the bankruptcy court given these intervening events. *See Holland*, 139 Nev., Adv Op. 49, 540 P.3d at 1086.

Second, Lisa argues that the writ of garnishment and execution she filed in 2017 tolled or extended the period of limitations for the 2015 judgment, and that the judgment has not expired.

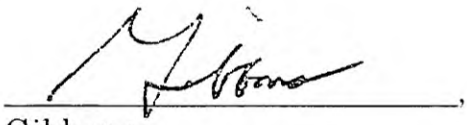
However, the Nevada Supreme Court's 2023 order rejected this argument, instead deciding that "the collection efforts Lisa undertook between 2015 and 2021 would not restart the statute of limitations," and therefore affirmed the district court's order finding that the 2015 judgment expired. *Gibson*, Docket No. 84011, 2023 WL 3993183, *2. And the doctrine of the law of the case therefore prevents further consideration of this argument. *See Recontrust Co. v. Zhang*, 130 Nev. 1, 7-8, 317 P.3d 814, 818 (2014) (explaining that, under the law-of-the-case doctrine, a court generally cannot reconsider questions decided by the court in an earlier phase); *see also Hall v. State*, 91 Nev. 314, 316, 535 P.2d 797, 799 (1975) ("The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.").

Even if not barred by the law of the case, Lisa provides no relevant authority in support of her argument that a writ of garnishment tolls the period of limitations. She argues that a writ of garnishment tolls the period of limitations under NRS 17.214 and *Davidson v. Davidson*, 132 Nev. 709, 382 P.3d 880 (2016). The Nevada Supreme Court in *Davidson* merely held that any claim or motion practice to enforce a judgment is subject to the period of limitations in NRS 11.190 and NRS 11.200 (i.e., when the debt becomes due) and did not specifically address tolling. *Id.* at 715-16, 382 P.3d at 884. Likewise, NRS 17.214 only details how to file an affidavit of renewal; it does not establish that a writ of garnishment tolls a judgment's period of limitations. Further, NRS 21.010 expressly provides that a "writ [of execution] ceases to be effective when the judgment expires." Thus, Lisa's argument fails, and the writ of garnishment did not toll the period of limitations.

Lisa also argues that the district court should have dismissed Thomas's motion for exemption and that her former attorney has no right to the funds. But both of those arguments presuppose that Lisa has a right to the funds. Because she does not, the arguments are moot, and we need not address them here. *See Nat'l Collegiate Athletic Ass'n v. Univ. of Nev., Reno*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981) (noting that the duty of courts is to decide actual controversies, not give opinions upon moot questions or abstract propositions).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.[3]



_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Stacy Michelle Rocheleau, District Judge, Family Division
Robin J. Barber
Nevada Family Law Group
Eighth District Court Clerk

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[3]Insofar as Lisa has raised arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief. We also vacate the stay pending appeal granted by the district court.