

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

REBECCA L. NORRINGTON,
Appellant,
vs.
SEAN M. TANKO, TRUSTEE OF THE
NORRINGTON FAMILY TRUST, AN
INDIVIDUAL,
Respondent.

No. 88338-COA

FILED

MAR 21 2025

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING

Rebecca L. Norrington appeals from a district court order dismissing a civil complaint. Eighth Judicial District Court, Clark County; Danielle K. Pieper, Judge.

In 2019, Rebecca filed a petition in the Eighth Judicial District Court (case no. P-19-099344-T) to assume jurisdiction of the Norrington Family Trust (Trust). In her petition, Rebecca alleged that Ralph and Marcelle Norrington created and executed the Trust in 1993, which contained real property located on Linkview Drive in Las Vegas and designated her as the successor trustee. Rebecca alleged that the Trust was amended in May 2005 to designate her as the beneficiary who would “solely inherit” the Linkview Drive residence. After Ralph’s death in 2008, Marcelle retained respondent Sean Tanko to serve as her attorney, and Tanko prepared several amendments to the Trust on Marcelle’s behalf. A May 2015 amendment nominated Tanko as successor trustee, while an August 2016 amendment changed the beneficiary of the Linkview Drive property to Christian P. Bakke, who apparently served as Marcelle’s handyman.

After Marcelle died in 2018, Rebecca demanded that trustee Tanko comply with the original May 2005 amendment and transfer the Linkview Drive property and its contents to her. When Tanko refused, Rebecca filed the aforementioned petition pursuant to NRS 153.031, NRS 164.010, and NRS 164.015, requesting Tanko’s removal as trustee, a declaration that the August

2016 bequest was void, and the transfer of the Linkview Drive property and its contents to her.

As relevant here, Rebecca alleged that the 2016 bequest to Bakke was void as a product of undue influence and duress because, at the time of its creation, Marcelle suffered from dementia and other physical ailments and was dependent on Bakke for transportation and personal assistance. In seeking Tanko's removal as trustee, Rebecca alleged that Tanko had breached the Trust by refusing to comply with the 2005 amendment and that Tanko had an actual and present conflict of interest based on his involvement in preparing the 2016 bequest of property to Bakke.

In August 2019, Rebecca settled her property dispute with Bakke for \$40,000 of her inheritance in exchange for the Linkview Drive property. In September 2019, the probate court assumed jurisdiction over the Trust and confirmed Tanko as trustee. In April 2020, Rebecca filed a notice of voluntary dismissal of her petition. The probate court subsequently entered an order for a first and final accounting and distribution of Trust assets in March 2022. Notwithstanding that order, the parties agree that the probate case remains open and that the parties are litigating "ongoing" matters therein.

In October 2023, Rebecca filed the instant civil complaint against Tanko (case no. A-23-879462-C) asserting three purported causes of action—breach of fiduciary duty, fraud, and a request for mandamus relief—based on Tanko's involvement in the Trust matter. Relevant to her appeal, Rebecca alleged Tanko breached his fiduciary duty by his ongoing failures to disperse funds as prescribed in the Trust, and to make reimbursements to beneficiaries. Additionally, Rebecca alleged Tanko committed fraud in 2016 when he drafted the Trust amendment that bequeathed the family home to Bakke. Finally, Rebecca asserted a purported claim entitled "Mandamus" or for mandamus relief which requested that the district court enter an order "directing Tanko, as Trustee, to make the appropriate distributions as required by the Trust."

Tanko moved to dismiss Rebecca's civil complaint on various grounds, including as relevant here, claim preclusion. Tanko argued that the civil complaint was based on the same claims that were, or could have been, brought in the Trust case; that the parties were the same in both cases; and that Rebecca's Trust claims asserted in her 2019 petition had been litigated to their conclusion, culminating in a final order approving the Trust accounting and distributions, which was entered in March 2022. However, the parties agree that they are continuing to litigate matters in the open Trust case in probate court.

Rebecca opposed the motion to dismiss, arguing that claim preclusion did not apply because Tanko's conduct in the Trust matter was "ongoing" and had not been fully litigated. For support, Rebecca pointed to allegations in her complaint that, in his role as trustee, Tanko failed to make the required Trust distributions, failed to reimburse costs and fees owed to beneficiaries, and put his own interests above those of the beneficiaries.

Following a hearing on the motion to dismiss, the district court entered an order granting Tanko's motion to dismiss with prejudice on the basis of claim preclusion. Rebecca timely appealed that order.

On appeal, Rebecca argues that the district court erred when it dismissed her case on claim-preclusion grounds, because this case involves (1) "similar" but not the same parties; and (2) allegations of "ongoing" conduct by Tanko that have not been fully litigated, and that could not have been brought in the Trust matter. Specifically, Rebecca argues that there remains an "ongoing failure to distribute trust assets."¹ In response, Tanko asserts that Rebecca's

¹We note that Rebecca's opening brief fails to allege or identify allegations demonstrating the fraud claim—which was premised on the 2016 bequest—remains ongoing such that it is not barred by claim preclusion. Thus, she has waived any challenge to the dismissal of that claim. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that arguments not raised on appeal are deemed waived). Accordingly, we affirm the portion of the district court's order dismissing this claim with prejudice.

complaint did not include any allegations of ongoing conduct; that, even if there were allegations of ongoing conduct, the original Trust matter is still open and the probate court still has jurisdiction over the Trust and the parties, and is the more appropriate forum for this litigation; and that the complaint is an “end run” around NRCP 60 and appeal timing.

This court “rigorously review[s] a district court order granting an NRCP 12(b)(5) motion to dismiss, accepting all of the plaintiff’s factual allegations as true and drawing every reasonable inference in the plaintiff’s favor to determine whether the allegations are sufficient to state a claim for relief.” *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). “A complaint should be dismissed for failure to state a claim only if it appears beyond a doubt that [the plaintiff] could prove no set of facts, which, if true, would entitle [the plaintiff] to relief.” *Id.* (internal quotation marks omitted). This court reviews a district court’s decision to dismiss a complaint for claim preclusion *de novo*. *Id.*

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.’”² *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).

²On appeal, Rebecca fails to challenge the second element and instead appears to concede the March 2022 probate court order is a final judgment for preclusion purposes. Thus, she has waived any argument to the contrary. See *Powell*, 127 Nev. at 161 n.3, 252 P.3d at 672 n.3. As such, we address only Rebecca’s arguments regarding the first and third elements of claim preclusion.

Although Rebecca contends that the first element of claim preclusion was not met, she does not dispute that, in his capacity as trustee,³ Tanko was a party to the Trust litigation. See NRS 164.010(5)(b) (providing that when a district court assumes jurisdiction of a trust, the court has personal jurisdiction over any trustee confirmed by the court). Because Rebecca and Tanko undisputedly appeared and litigated in both actions, the first element of claim preclusion was met.

As to the third element of claim preclusion—whether this case involves claims that were, or could have been, brought in the prior Trust case—Rebecca argues preclusion could not apply because “there is [an] ongoing failure to distribute trust assets.” Rebecca further asserts, in a conclusory manner, that “there were also allegations regarding conduct that occurred after the 2019 case reached its conclusion,” but failed to identify these allegations or explain how they arose after the March 2022 order. In response, Tanko argues that if any allegations or claims remain, they should be litigated in the ongoing probate matter and, pursuant to the “first-filed case doctrine,” the probate matter should be given “deference.” In reply, Rebecca acknowledges “that some of the conduct” has been previously referenced or litigated in the probate matter but argues this does not preclude her from using these same facts to demonstrate an ongoing course of conduct. Further, Rebecca argues the ongoing conduct is “the continual mishandling, misappropriation, and damage done to [her].”

³We need not address Rebecca’s unsupported argument that the parties are merely “similar” because her complaint in this case seeks relief against Tanko in his personal capacity, while the Trust matter “only pertained to Tanko in his capacity as Trustee.” See *Edwards v. Emperor’s Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (stating that this court need not consider arguments that are not cogent or lack the support of relevant authority). However, we note that the relief requested in the complaint undermines Rebecca’s position because she expressly requested the district court enter an order “directing Tanko, *as Trustee*, to make the appropriate distributions as required by the Trust.” (Emphasis added.)

Claim preclusion is “[a] policy-driven doctrine . . . designed to promote finality of judgments and judicial efficiency by requiring a party to bring all related claims against its adversary in a single suit, on penalty of forfeiture.” *Rock Springs Mesquite II Owners’ Ass’n v. Raridan*, 136 Nev. 235, 238, 464 P.3d 104, 107 (2020) (internal quotation marks omitted). However, the doctrine of claim preclusion has limits when a party is accused of the same course of wrongful conduct occurring after the entry of a final order. *See, e.g., Holland*, 139 Nev., Adv. Op. 49, 540 P.3d at 1086 (holding that claim preclusion did not bar fraudulent transfer and conversion claims because “the alleged underlying fraudulent transfer and conversion of . . . property to [the appellant] occurred after the bankruptcy proceeding”).

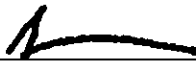
We conclude that, based on the arguments and record before us, the district court erred by using claim preclusion to dismiss Rebecca’s breach of fiduciary duty claim and request for mandamus relief because the complaint alleged ongoing wrongful conduct that may have arisen following the March 2022 order. We note the district court’s order, which Tanko’s counsel drafted, does not contain any findings regarding when the breach of fiduciary duty or mandamus claims arose or whether any of the challenged conduct occurred after the March 2022 order. *See Eivazi v. Eivazi*, 139 Nev., Adv. Op. 44, 537 P.3d 476, 482, 484 (Ct. App. 2023) (cautioning district courts to scrutinize the contents of proposed orders because they assume responsibility for the findings set forth therein).

The complaint alleges that Tanko failed to disperse the Trust assets and that this failure remains ongoing. The complaint also alleges an ongoing failure to reimburse funds to beneficiaries. Absent any finding demonstrating these alleged failures occurred prior to the March 2022 order, which is the order Tanko relied upon in asserting claim preclusion, we cannot affirm the district court’s conclusory order. We further note that, on appeal, Tanko appears to concede that there may be allegations that arose following the March 2022 order, because he argues that any “new” allegations should be brought in the probate

matter pursuant to the “first-filed doctrine.”⁴ Because we cannot discern from the record what assets Tanko allegedly failed to distribute, what reimbursements Tanko allegedly failed to make, and whether these failures arose before or after the March 2022 order, we reverse and remand this matter to the district court for further proceedings consistent with this order. In doing so, we note that the district court may consider the application of the “single action rule” and determine whether it or the probate court should resolve the remaining issues or, alternatively, whether the cases should be consolidated or coordinated. See *Laughon v. Silver State Shopping Ctr.*, 109 Nev. 820, 822-23, 858 P.2d 44, 45-46 (1993); EDCR 2.50.

However, we affirm the district court’s order dismissing Rebecca’s fraud claim as she failed to advance any argument on appeal that this claim is not barred by claim preclusion.

It is so ORDERED.⁵


_____, C.J.
Bulla


_____, J.
Gibbons


_____, J.
Westbrook

⁴We question whether the “first-to-file rule” applies here in that this case and the probate case were both filed in the Eighth Judicial District Court. See, e.g., *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982). However, Tanko appears to have raised this argument for the first time on appeal and thus we decline to consider it further in the first instance. See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

⁵Insofar as the parties raise other arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a further basis for relief or need not be reached given our disposition. Nevertheless, we take this opportunity to point out that mandamus is typically a form of relief and not a separate cause of action or claim.

cc: Hon. Danielle K. Pieper, District Judge
American Freedom Group, LLC
Origins Legal Group, LLC
Eighth District Court Clerk