IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JESSE JAMES MATZ,
Appellant,
vs.
WESTERN PROGRESSIVE-NEVADA, INC. AND BRECKENRIDGE PROPERTY FUND 2016, LLC,
Respondents.

No. 88957-COA

ORDER OF AFFIRMANCE

Jesse James Matz appeals from a final district court order in a quiet title action. Eighth Judicial District Court, Clark County; Michael A. Cherry, Senior Judge; Eighth Judicial District Court, Clark County; Veronica Barisich, Judge.

Matz's mother, Juanita, purchased a residential property in 2005. To facilitate that purchase, Juanita executed a promissory note secured by a deed of trust. Juanita later defaulted on the mortgage loan. Juanita and Matz's father initiated a civil action (previous action), seeking to extinguish the deed of trust and the debt it secured and to quiet title to the property in their favor. They also recorded a lis pendens against the property. Respondent, Western Progressive-Nevada, Inc., as the trustee of the deed of trust, was named as a defendant in the previous action. The district court ultimately granted summary judgment in favor of the defendants in the previous action, finding the undisputed facts demonstrated that the mortgage loan was valid and that Juanita had failed to tender the required payments on that loan. This court affirmed the

judgment of the district court on appeal. *Matz v. Matz*, No 79280-COA, 2020 WL 5223140 (Nev. Ct. App. Aug. 24, 2020) (Order of Affirmance).

Western Progressive later issued notices of its intent to sell the property at a trustee's sale. In August 2021, Juanita executed a quit claim deed in favor of Matz. Respondent Breckenridge Property Fund 2016, LLC later purchased the property at a September 2021, foreclosure sale for $382,000. Breckenridge subsequently moved to intervene in the previous action as it sought to expunge the lis pendens. The district court thereafter granted Breckenridge's motion to intervene and expunged the lis pendens.

Matz subsequently filed the instant action, seeking to quiet title to the property in his favor and alleging wrongful foreclosure. In his complaint, Matz sought to extinguish the 2005 deed of trust, alleging various defects in the loan instruments and the assignments of the deed of trust rendered the deed of trust and the debt it secured invalid. Matz also alleged he should have been served with notice of the foreclosure sale as he was the titleholder of record when the sale took place, and that the foreclosure sale accordingly should not have been conducted.

Matz served Breckenridge with the summons and complaint but he had difficulty serving Western Progressive. Breckenridge filed an answer and counterclaim, seeking to quiet title in its favor as it contended it was the rightful owner of the property. Matz and Breckenridge thereafter engaged in discovery. Breckenridge ultimately filed a motion for summary judgment, contending summary judgement was warranted as there were no genuine disputes of material fact. To that end, Breckenridge asserted that Matz's allegations concerning the validity of the deed of trust and the debt it secured were either raised in the previous quiet title action or could have been raised in that action and that claim and issue preclusion barred

consideration of those allegations. Breckenridge also asserted that the undisputed facts demonstrated that it purchased the property through a valid foreclosure sale and that it was accordingly the rightful owner of the property. Matz opposed the motion, arguing disputes of fact remained as to whether the deed of trust and the debt it secured were valid and whether Breckenridge had a proper ownership interest in the property.

The district court held a hearing concerning the motion and noted at that hearing that Matz had not yet served Western Progressive with the summons and complaint. The district court thereafter granted Matz's request for additional time to complete service of process upon Western Progressive but it announced its intention to grant summary judgment in favor of Breckenridge.

The district court later entered a written order granting Breckenridge's motion for summary judgment, determining that claim and issue preclusion barred Matz's allegations concerning the validity of the deed of trust and debt it secured. The court also concluded that the undisputed facts demonstrated that Breckenridge had properly purchased the residence at the foreclosure sale and the court accordingly quieted title to the property in favor of Breckenridge.

Matz completed service of process upon Western Progressive. Western Progressive subsequently filed a motion seeking dismissal based on claim and issue preclusion, because the record demonstrated it had complied with all notice requirements, and because Matz was unable to substantiate a valid claim of wrongful foreclosure. Matz opposed the motion, reiterating his allegations concerning the validity of the deed of trust and the debt it secured and contended that he should have been served notice of the foreclosure sale. Matz also argued that claim and issue

preclusion should not bar his allegations because he was not in privity with his parents and because he raised allegations concerning the deed of trust and the debt it secured that were different than those raised in the previous quiet title action. The district court ultimately granted the motion, again determining that claim and issue preclusion barred consideration of Matz's challenges to the validity of the deed of trust and the debt it secured. The district court also determined that Matz was not entitled to relief as to his wrongful foreclosure claim.[1]

Matz subsequently filed a motion for reconsideration of the district court's orders, which the district court denied, concluding there was no basis to reconsider its decisions. This appeal followed.

Claim and issue preclusion

Matz argues the district court erred by determining claim and issue preclusion barred consideration of his challenges to the validity of the deed of trust and the debt it secured. This court reviews a district court's order granting summary judgment de novo. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). Summary judgment is proper if the pleadings and all other evidence on file demonstrate that no genuine dispute of material fact exists and the moving party is entitled to judgment as a matter of law. *Id.* When deciding a summary judgment motion, all

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[1]We note that a district court "may take into account matters of public record, orders, items present in the record of the case, and any exhibits attached to the complaint when ruling on" an NRCP 12(b)(5) motion. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). Thus, it was appropriate for the district court to take into account when evaluating Western Progressive's motion to dismiss the notice of trustee's sale, which was attached to Matz's complaint; the trustee's deed, which was a publicly recorded document; and the pleadings and orders from the previous action.

evidence "must be viewed in a light most favorable to the nonmoving party." *Id.* General allegations and conclusory statements do not create genuine disputes of fact. *Id.* at 731, 121 P.3d at 1030-31. The party moving for summary judgment must meet its initial burden of production to show no genuine disputes of material fact exist. *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). The nonmoving party must then "transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine [dispute] of material fact." *Id.* at 603, 172 P.3d at 134.

This court also reviews an order granting a motion to dismiss for failure to state a claim upon which relief can be granted under NRCP 12(b)(5) de novo. *Brown v. Eddie World, Inc.*, 131 Nev. 150, 152, 348 P.3d 1002, 1003 (2015). We rigorously review 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. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). 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.* at 228, 181 P.3d at 672.

First, Matz contends the district court erroneously concluded that claim preclusion barred his claims challenging the validity of the deed of trust and the debt it secured. Matz contends he and his parents lacked privity, the claims he raises concerning the validity of the deed of trust and the debt it secured are different from those raised in the previous action,

and the district court's grant of summary judgment in the previous action was not meant to have preclusive effect.

"A district court's decision as to claim preclusion is reviewed de novo." *Holland v. Anthony L. Barney, Ltd.*, 139 Nev. 476, 486, 540 P.3d 1074, 1084 (Ct. App. 2023). "Claim preclusion aims to achieve finality by preventing another lawsuit based on the same facts as in an initial suit." *Id.* Claim preclusion applies when:

> (1) the final judgment is valid, . . . (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 case, 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 v. Sharp, 131 Nev. 233, 241, 350 P.3d 80, 85 (2015) (internal citation, brackets, and internal quotation marks omitted). "[C]laim preclusion applies to prevent a second suit based on all grounds of recovery that were or could have been brought in the first suit." *Five Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008), *holding modified by Weddell*, 131 Nev. at 241, 350 P.3d at 85.

Here, the order granting summary judgment in the previous action was a valid and final judgment with preclusive effect, *see* Restatement (Second) of Judgments § cmt. 19(g) (1982) (stating the general rule that a judgment rendered in favor of a defendant bars a plaintiff from bringing another action on the same claim "is applicable to a case in which it is determined before trial that there is no genuine dispute with respect to any material fact and that, as a matter of law, the defendant is entitled to

judgment"). Matz does not cogently explain why he believes the order in the previous action was not a valid and final judgment with preclusive effect. *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (explaining that Nevada's appellate courts need not consider issues unsupported by cogent argument).

Next, Matz's claims challenging the validity of the deed of trust and the debt it secured were or could have been brought in the previous action. In the previous quiet title action, Matz's parents challenged the validity of the deed of trust and the debt it secured and sought to quiet title to the property in their favor. In this action, Matz again challenged the validity of the deed of trust and the debt it secured, alleging various issues occurred when the mortgage loan was created or with the assignments of the deed of trust after its execution that he contended invalidated both of them. Matz also sought to quiet title to the property in his favor. Accordingly, we conclude that Matz's allegations either were raised in the previous action or were reasonably available to have been raised therein. *See Five Star Cap. Corp.*, 124 Nev. at 1058, 194 P.3d at 715.

Finally, Matz contends he was not in privity with his parents. "[D]etermining privity for preclusion purposes requires a close examination of the facts and circumstances of each case." *Mendenhall v. Tassinari*, 133 Nev. 614, 619, 403 P.3d 364, 369 (2017). Privity applies when an "individual acquired an interest in the subject matter affected by the judgment through . . . one of the parties, as by inheritance, succession, or purchase." *Id.* Here, Matz purchased his interest in the relevant property and received it via quitclaim deed from Juanita, a party in the previous action. Thus, Matz and Juanita are privies.

As Matz's challenges to the district court's application of claim preclusion lack merit, Matz fails to demonstrate that the district court erred by determining that claim preclusion barred consideration of his claims concerning the validity of the deed of trust and the debt it secured. *See Weddell*, 131 Nev. at 241, 350 P.3d at 85.

Next, Matz argues that the district court erred by applying issue preclusion, as he asserts the issues in this matter are distinct from those raised in the previous action. Having concluded that claim preclusion applies to Matz's challenges to the deed of trust and the debt, we need not reach the application of issue preclusion to the same challenges, but regardless we conclude that these challenges are likewise precluded under issue preclusion. We review a determination of issue preclusion de novo. *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014). The elements for issue preclusion are:

> (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 Capital Corp, 124 Nev. at 1055, 194 P.3d at 713 (citation omitted and internal quotation marks omitted).

In the previous action, Matz's parents sought to extinguish the deed of trust and the debt it secured, alleging, among other things, defects in the assignments of the deed of trust and the debt it secured rendered them ineffective. As a result, Matz's parents alleged that the defendants had no valid interest in the property and they accordingly sought to quiet title to the property in their favor. The district court, in granting summary

judgment in favor of the defendants in the previous action, determined that the "secured loan was assigned, transferred and is held in favor of" the defendants that sought summary judgment.

In this action, Matz again challenged the validity of the deed of trust and the debt it secured, alleging that assignments of the deed of trust rendered it and the debt it secured ineffective, and he also sought to quiet title in his favor. The underlying issues that were decided in the previous action are identical to the issues Matz raises in this matter. In addition, the ruling in the previous action was on the merits and was a final decision. Moreover, as explained previously, Matz is in privity with Juanita, a plaintiff in the previous litigation. Finally, the issues were actually and necessarily litigated. In light of the foregoing, the elements of issue preclusion were met, and the district court did not err by determining that issue preclusion barred consideration of Matz's claims.[2] *See id.*

Wrongful Foreclosure

Next, Matz argues the district court erroneously dismissed his wrongful foreclosure claim as to Western Progressive, contending Western

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[2]Matz contends the district court should have rejected Breckenridge's motion for summary judgment, arguing it was filed more than 30 days after the scheduled close of discovery in violation of NRCP 56(b). However, Matz made several additional discovery requests after the scheduled close of discovery, including after Breckenridge filed its motion for summary judgment. In light of the record before this court, we conclude Matz fails to demonstrate the district court abused its discretion by declining to reject Breckenridge's motion for summary judgment as untimely. *See* NRCP 56(b) ("Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of *all* discovery." (emphasis added)); *see also Dangberg Holdings Nev., L.L.C. v. Douglas Cnty.*, 115 Nev. 129, 141, 978 P.2d 311, 318 (1999) (reviewing a district court decision concerning the timeliness of a motion made under the rules of civil procedure for an abuse of discretion).

Progressive should have served him with the notice of sale. A wrongful foreclosure cause of action requires a plaintiff to "establish that at the time the power of sale was exercised or the foreclosure occurred, no breach of condition or failure of performance existed on the mortgagor's or trustor's part which would have authorized the foreclosure or exercise of the power of sale." *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 304, 662 P.2d 610, 623 (1983). "A wrongful foreclosure claim challenges the authority behind the foreclosure, not the foreclosure act itself." *McKnight Fam., LLP v. Adept Mgmt. Servs.*, 129 Nev. 610, 616, 310 P.3d 555, 559 (2013), *abrogated on other grounds by Saticoy Bay, LLC, Series 9720 Hitching Rail v. Peccole Ranch Cmty. Ass'n*, 137 Nev. 516, 495 P.3d 492 (2021).

Further, in addition to other notice requirements not relevant to this matter, the notice of sale must be mailed to the last known address of the trustor, posted in a public place, published for three consecutive weeks in a newspaper of general circulation, and posted on the relevant property. *See* NRS 107.080(4)(a), (b), (c); NRS 107.087. Moreover, NRS 107.080(3) provides the parties entitled to be mailed a copy of the recorded notice of default and election to sell are "the grantor or, to the person who holds the title of record on the date the notice of default and election to sell is recorded."

Here, Matz alleged in his complaint that Western Progressive was required to serve him with the notice of sale after Juanita executed the quit claim deed in his favor. However, NRS 107.080(4) and NRS 107.087 did not require Western Progressive to serve him with the notice of trustee's sale but rather required Western Progressive to serve it on Juanita as the trustor, post the notice of sale in a public place, publish the notice of sale for

three consecutive weeks in a newspaper of general circulation, and post the notice on the relevant property. The recorded trustee's deed stated that Western Progressive complied with all notice requirements, including mailing, posting, and publication of the required notices. To the extent Matz asserted he should have been served with the recorded notice of default and election to sell, his factual allegations demonstrated he was not the title holder of record when the notice of default and election to sell was recorded. *See* NRS 107.080(3). Moreover, Matz's complaint contained no allegations that he or the trustor actually tendered the amounts due under the mortgage loan, and he failed to demonstrate Western Progressive lacked the authority to conduct the foreclosure sale. *See Collins*, 99 Nev. at 304, 662 P.2d at 623. In light of the foregoing, we conclude Matz fails to demonstrate that the district court erred by dismissing his wrongful foreclosure claim.[3]

NRCP 56(d) relief

Next, Matz argues the district court abused its discretion by denying his request for additional discovery pursuant to NRCP 56(d). We review the denial of a request for a continuance in the face of a motion for summary judgment for abuse of discretion. *Aviation Ventures, Inc. v. Joan Morris, Inc.*, 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). NRCP 56(d) provides that a district court may allow additional time to conduct discovery if the nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition. *Choy v.*

[3]Matz contends Western Progressive conceded error by failing to file an answering brief. However, Matz's contention lacks merit as Western Progressive was not directed to file an answering brief and it was thus not required to do so. *See* NRAP 46A(c).

Ameristar Casinos, Inc., 127 Nev. 870, 873, 265 P.3d 698, 700 (2011). In addition, such a request is only appropriate when the movant expresses how further discovery will create a genuine dispute of material fact. *Aviation Ventures*, 121 Nev. at 118, 110 P.3d at 62.

Matz does not explain what information he could have gained via additional discovery and how any such information he hoped to gain would have created a genuine dispute of material fact concerning the issues raised by Breckenridge in its motion for summary judgment. Matz does not demonstrate that any failure to permit him additional time to conduct discovery was arbitrary or capricious or exceeded the bounds of law or reason; he fails to demonstrate the district court abused its discretion by failing to afford him NRCP 56(d) relief. *See id.* at 117-18, 110 P.3d at 62; *see also Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) (explaining that, to establish an error is not harmless and reversal is warranted, "the movant must show that the error affects the party's substantial rights so that, but for the alleged error, a different result might reasonably have been reached").

Post-judgment award of attorney fees

Next, Matz challenges a post-judgment order award of attorney fees, arguing the district court lacked jurisdiction to enter its order. However, the district court maintains jurisdiction over issues that are collateral to the issues raised on appeal, such as attorney fees and costs. *See Kantor v. Kantor*, 116 Nev. 886, 895, 8 P.3d 825, 830 (2000). In addition, an order granting attorney fees and costs is independently appealable as a special order after final judgment. *See* NRAP 3A(b)(8) (providing for appeals from special orders entered after a final judgment); *Smith v. Crown Fin. Servs.*, 111 Nev. 277, 280 n.2, 890 P.2d 769, 771 n.2 (1995). Thus, to

the extent Matz challenges the district court's decisions relating to its post-judgment order awarding attorney fees and costs, such a challenge is not properly before this court as part of this appeal, and we do not consider it in resolving this matter.

In light of the foregoing, we

ORDER the judgment of the district court AFFIRMED.[4]

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

cc: Chief Judge, Eighth Judicial District Court
Hon. Michael A. Cherry, Senior Justice
Hon. Veronica Barisich, District Judge
Jesse James Matz
Wirthlin & Verlaine
Houser LLP / Irvine
Hutchison & Steffen, LLC/Las Vegas
Eighth District Court Clerk

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[4]Insofar as Matz raises 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. In addition, we have considered Matz's July 29, 2025, motion for status inquiry and case management order, and we conclude no relief is warranted.