IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENICE WASHINGTON, AN INDIVIDUAL, AND ARIEL WASHINGTON, AN INDIVIDUAL,
Appellants,
vs.
ORANGE REALTY GROUP, LLC, A NEVADA LIMITED LIABILITY COMPANY, AND LEEVILLA, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 88961-COA

ORDER OF AFFIRMANCE

Venice and Ariel Washington appeal from a district court order granting respondents' motion to dismiss in a breach of contract and tort action. Eighth Judicial District Court, Clark County; Anna C. Albertson, Judge.

Venice Washington, and her adult daughter, Ariel, had rented a house since October 2019 that was managed by respondents Orange Realty Group and owned by Leevilla, LLC. The economic difficulties caused by the COVID-19 pandemic left Venice out of work and she was eventually unable to pay their rent. Once the countywide eviction moratorium was lifted, Venice applied for and received approval to participate in the Clark County CARES Housing Assistance Program (CHAP).

Leevilla agreed to participate in CHAP, meaning CHAP would pay rent to Leevilla on the Washingtons' behalf. On October 26, 2022, Orange Realty Group memorialized this agreement via a signed verification form confirming that they accepted CHAP's payment for the Washingtons'

August, September, and October rent. This form included an acknowledgment that stated the landlord agreed "to not initiate any new court proceeding . . . and to allow Tenants to reside in the dwelling unit for a period of not less than 60 days from receipt of payment of these funds without eviction proceedings commencing." This provision is also found in the contract the landlord must sign to receive CHAP funds.

On December 7, 2022, Orange Realty Group posted a seven-day notice to pay or quit on the Washingtons' door. At this time, Venice was caring for relatives in California who had fallen ill with COVID-19. Because she was out of state at the time the eviction notice was served, Venice attempted to file her answer to the eviction notice electronically. Despite Venice's numerous attempts to file her answer, the justice court rejected her filings for various reasons. Ultimately, the Washingtons did not file an answer to the eviction notice, and Orange Realty Group filed a complaint for summary eviction on December 20, 2022. The justice court subsequently entered an order for summary eviction on December 28, 2022. The Washingtons were locked out of their home on January 11, 2023.

A couple of days later, the Washingtons moved to set aside the order for summary eviction and to seal their case. However, the justice court denied this motion, finding there was "[n]o affirmative defense asserted prior to lockout" and because the "CHAP application was not completed until after lockout on [January 12, 2023]." The Washingtons subsequently filed a motion to reconsider the order denying the motion to set aside the summary eviction, but the justice court denied this motion, ruling again that the Washingtons "did not assert an affirmative defense prior to lockout." The Washingtons did not appeal this order.

In March, the Washingtons filed a second motion to seal the eviction, arguing that they were being rejected by owners or managers of potential rental properties because of their eviction record. The justice court denied this motion to seal. In May, the Washingtons appealed the justice court's denial of the second motion to seal, but the district court dismissed this appeal because it was filed without the required cost bond.

The Washingtons tried to file another appeal to the district court about a week later. In that statement of facts and law in support of the appeal, the Washingtons asserted that the landlord committed fraud "as they accepted payment and breached contract by evicting within 60 days of receiving CHAP payment." The Washingtons claimed that "CHAP requires landlords to agree not to evict tenants for 60 days after receiving payment. The landlord proceeded with the eviction anyway . . . . Landlord's actions were not only a violation of AB486 [sic] but also a breach of the agreement made . . . when they accepted the CHAP payment." The district court subsequently dismissed this appeal as untimely.

In July, Venice filed a complaint in small claims court alleging she was entitled to damages stemming from her wrongful eviction in January 2023. After a hearing, the justice court entered a judgment dismissing Venice's complaint with prejudice. In that order, the justice court stated, "Plaintiff seeks compensation for wrongful eviction. This [c]ourt takes judicial notice of the procedural history of Plaintiff's Las Vegas Justice Court Evictions." The justice court concluded that Venice's wrongful eviction complaint "necessitates a relitigation of the underlying eviction case" and that "Plaintiff asks this [c]ourt to revisit the same facts presented in the eviction case, and assess the same cause of action contained in that case as well." As a result, the justice court concluded that Venice was

"barred by the Doctrines of *Collateral Estoppel* and/or *Res Judicata*, from relitigating the issues of whether or not she should have been evicted." Venice did not appeal this order to the district court.

In February 2024, the Washingtons filed the underlying complaint in district court asserting causes of action for breach of contract, negligent infliction of emotional distress, intentional infliction of emotional distress, unlawful detainer/wrongful initiation of eviction proceedings, and breach of the implied covenant of good faith and fair dealing, in connection with the January 2023 eviction. Therein, the Washingtons alleged that respondents agreed to participate in the CHAP program and thus agreed "to not initiate any legal proceeding[s] . . . against any of the above Tenants for unpaid rent" and "to allow Tenants to reside in the dwelling unit for a period of not less than 60 days from the receipt of payment of these funds without eviction proceedings commencing." The Washingtons asserted that respondents received multiple CHAP payments on their behalf with the last payment received November 7, 2022. The Washingtons further alleged that, after receiving this last CHAP payment, respondents "intentionally and negligently file[d] eviction proceedings against them on December 20, 2022," and thus "violat[ed] the 60 day protected period and therefore breach[ed] the contract."

Beyond these general allegations, the Washingtons alleged—as part of their breach of contract claim—that they were third party beneficiaries to the rental assistance agreement through CHAP and that respondents breached that agreement by initiating eviction proceedings. They further alleged that this breach of contract resulted in homelessness, emotional distress, and defamation of character.

Respondents subsequently moved to dismiss the complaint, arguing that the Washingtons' claims had already been litigated and decided and thus must be dismissed under the claim preclusion doctrine. They further argued that any claims not brought in the justice court should have been brought as compulsory counterclaims in the summary eviction action.

In their opposition to the motion to dismiss, the Washingtons noted that, "[w]hile there may be some factual overlap [between the instant complaint and the prior actions], the present case involves new distinct legal issues and factual nuances." Specifically, the Washingtons claimed that this action centered on respondents' violation of their agreement with CHAP and that this claim could not have been brought as a compulsory counterclaim in the eviction action because these arguments were "separate from the lease agreement and the possessory claims of the eviction case."

In reply, respondents argued again that res judicata should apply because the issues presented in the district court complaint were "not separate and distinct." Instead, respondents asserted that these claims were "based on the same set of facts" as the justice court and summary eviction actions.

The district court subsequently granted respondents' motion to dismiss with prejudice. In its order, the district court found that "[t]his matter was first heard by the Las Vegas Justice Court in an eviction proceeding . . . in which Plaintiffs had a complete and full opportunity to raise these issues." The order also found that the Washingtons twice appealed the summary eviction order and both appeals were dismissed. The district court further found that Venice thereafter filed a small claims suit where respondents again prevailed because the justice court determined

collateral estoppel and/or res judicata applied such that dismissal was warranted. The dismissal order went on to note that the Washingtons then initiated the underlying case, which once again brought the "same claims or claims based on the same set of facts" that were raised in the previous action. And based on this analysis, the district court determined that preclusion principles barred the district court action, such that it must be dismissed, with prejudice. This appeal followed.

On appeal, the Washingtons argue that the district court erred in applying preclusion principles and dismissing their claims. In our review of the record, it is apparent that the Washingtons faced—and continue to face—profound difficulties because of their eviction. While we are sympathetic to the concerns raised by the Washingtons regarding their summary eviction proceedings, the procedural posture before this court requires that we affirm the district court's dismissal of the underlying action on claim preclusion grounds. More specifically, we conclude that claim prelusion attached based on the small claims action, and thus preclusion principles barred the Washingtons' district court claims.

This court reviews a district court order granting a motion to dismiss on claim preclusion grounds de novo. *Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 136 Nev. 235, 237, 464 P.3d 104, 107 (2020); *G.C. Wallace, Inc. v. Eighth Jud. Dist. Ct.*, 127 Nev. 701, 705, 262 P.3d 1135, 1137 (2011) ("Whether claim preclusion is available is a question of law reviewed de novo."). The supreme court has set forth a three-part test for determining whether claim preclusion applies: "(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." *Five Star Capital Corp. v. Ruby*, 124

Nev. 1048, 1054, 194 P.3d 709, 713 (2008); *see also Holland v. Anthony L. Barney, Ltd.*, 139 Nev. 476, 486, 540 P.3d 1074, 1084 (Ct. App. 2023).

In challenging the district court's conclusion that their underlying claims were barred on claim preclusion grounds, the Washingtons argue that preclusion should not apply based on the dismissal of the small claims case because the complaint in that matter covered different time frames and sought different remedies than the district court action. Respondents, however, contend that the Washingtons' district court claims should have been brought in the small claims case where the Washingtons sought damages due to the allegedly wrongful eviction.

As an initial matter, the Washingtons do not challenge the applicability of the first claim preclusion factor—whether the parties or their privies are the same. *Five Star Capital Corp.*, 124 Nev. at 1054, 194 P.3d at 713; *Holland*, 139 Nev. at 486, 540 P.3d at 1084. As a result, we need not address that issue.

Turning to the second factor, whether the final judgment in the prior case was valid, *Five Star Capital Corp.*, 124 Nev. at 1054, 194 P.3d at 713, there was only one order issued in the small claims case: the order dismissing the small claims complaint with prejudice. And this order was a valid and final judgment. Under JCRCP 41(b), "[u]nless the dismissal order or an applicable statute provides otherwise, a dismissal under Rule 41(b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—*operates as an adjudication on the merits*." (Emphasis added.) In dismissing the small claims action, the justice court concluded that the claims set forth therein were "barred by the Doctrines of *Collateral Estoppel* and/or *Res Judicata*," based on the summary eviction action and that Venice was

therefore barred "from relitigating the issue of whether or not she should have been evicted." Thus, the justice court dismissed the small claims action for a reason other than lack of jurisdiction, improper venue, or failure to join a party, such that the dismissal order "operate[d] as an adjudication on the merits." JCRCP 41(b). And because the small claims dismissal adjudicated Venice's claims on the merits, the dismissal order was a valid and final judgment and thus, respondents satisfied the second claim preclusion factor.[1] *See Five Star Capital Corp.*, 124 Nev. at 1057-58, 194 P.3d at 715; *Holland*, 139 Nev. at 486, 540 P.3d at 1084.

The third factor for determining if claim preclusion applies dictates that claims are precluded from future litigation if "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." *Five Star Capital Corp.*, 124 Nev. at

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[1]To the extent the Washingtons suggest that claim preclusion should not apply to bar their district court claims because the justice court erred when it dismissed Venice's small claims action on preclusion grounds, we note that we can only review the challenged district court order and cannot consider any collateral attack on the merits of the justice court's decision. *See Five Star Capital Corp.*, 124 Nev. at 1059, 194 P.3d at 716 (concluding that, given that Five Star failed to appeal the prior dismissal, it had not "demonstrated that this court should disrupt sound claim preclusion principles merely to attempt to correct" its mistake). The Washingtons further attempt to analogize the preclusion-based dismissal of their small claims action to a procedural dismissal, which they argue should not be entitled to preclusive effect. But our supreme court rejected a similar argument in *Five Star Capital Corp.*, in concluding that a prior dismissal for failure to appear at a calendar call had preclusive effect. 124 Nev. at 1050, 194 P.3d at 710. And given that the small claims action was dismissed not on procedural grounds, but by the application of preclusion principles, we conclude this argument does not provide a basis for relief. *See id.* at 1054, 194 P.3d at 712 (discussing the purpose of claim preclusion).

1054, 194 P.3d at 713. Here, the small claims action asserted a claim for "wrongful eviction," and alleged that "[t]he wrongful eviction had injurious effects" causing "financial hardship, defamation of character, emotional distress, and . . . homelessness."

Before the district court, the Washingtons asserted claims for breach of contract, breach of the implied covenant of good faith and fair dealing, negligent infliction of emotional distress, intentional infliction of emotional distress, and unlawful detainer/wrongful initiation of eviction. With regard to the latter claim, although the Washingtons labeled this claim as seeking damages for "unlawful detainer," the basis for their claim was respondents' allegedly "wrongful initiation of eviction [p]roceedings within the protected 60 day period" when such proceedings were not supposed to be brought under the CHAP agreement. According to the Washingtons, their wrongful eviction under these circumstances "[c]onstituted an [u]nlawful [d]etainer." The Washingtons also asserted that respondents' "[i]ntentional and negligent breach of contract" caused them damages including homelessness, emotional distress and defamation of character. Thus, while some claims were unique to either the small claims or district court actions, there was also key overlap between the complaints, which both asserted claims for wrongful eviction, emotional distress and defamation. And because these claims for wrongful eviction, emotional distress and defamation were asserted in both actions, they are barred by claim preclusion. *Id.* at 1054, 194 P.3d at 713.

With regard to the Washingtons' remaining district court claims for breach of contract and breach of the implied covenant of good faith and fair dealing, these claims could have been brought in the small claims case and thus, they are likewise barred by claim preclusion. While

the Washingtons argue that the jurisdictional limitations for small claims court prevented them from bringing their district court claims in the small claims action, "[i]t is well-settled . . . that a jurisdictional limit alone does not, for purposes of claim preclusion, prevent a claim from being brought." *G.C. Wallace, Inc.*, 127 Nev. at 706, 262 P.3d at 1138.

Under NRS 73.010(1), justices of the peace sitting in small claims matters have jurisdiction over "all cases arising in the justice court for the recovery of money only, where the amount claimed does not exceed $10,000." Thus, the Washingtons could have brought their breach of contract and breach of the implied covenant of good faith and fair dealing claims in the small claims case—they simply would have been limited to seeking no more than $10,000 in damages. Critically, it was the Washingtons who elected to bring their initial, post-eviction civil action in small claims court rather than in district court. And having selected the small claims forum for their previous complaint, the Washingtons cannot now assert that they should be allowed to bring claims based on the same facts and conduct in district court based on the jurisdictional damages limitation for small claims cases. *See G.C. Wallace, Inc.*, 127 Nev. at 706, 262 P.3d at 1138 (stating preclusive effect attaches, "although the first action is brought in a court which has no jurisdiction to give a judgment for more than a designated amount," because "[t]he plaintiff, having voluntarily brought his action in a court which can grant him only limited relief, cannot insist upon maintaining another action on the claim" (citing Restatement (Second) of Judgments § 24 cmt. g (Am. L. Inst. 1982))).

Finally, while the Washingtons argue that they could not have brought their district court claims in justice court because they had not yet incurred the specific damages they sought in the district court action, that

argument does not provide a basis for relief. The Washingtons emphasize that, when the small claims action was filed, they did not expect they would "be homeless for another six months, significantly increasing the damages they suffered." But the fact that the Washingtons incurred additional damages over time, which nonetheless stemmed from the same event—their eviction—does not overcome the application of claim preclusion. Notably, the Washingtons cite no authority to support their specific position on this point.[2] *See Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (providing that this court need not consider claims that are unsupported by authority). More importantly, because the Washingtons' claims in both the small claims and district court actions arose from the same facts and conduct, under well-established Nevada law, their district court claims are barred by claim preclusion.[3] *See G.C. Wallace,*

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[2]To the extent the Washingtons attempt to analogize their situation to a claim that would be subject to the maturity exception for compulsory counterclaims discussed in *Mendenhall v. Tassinari*, 133 Nev. 614, 621, 403 P.3d 364, 371 (2017), that argument fails. As the *Mendenhall* court noted, "[a] legal remedy exists where the events giving rise to the cause of action develop . . . . A claim accrues when the wrong occurs and a party sustains injuries for which relief could be sought." *Id.* (internal quotation marks omitted). Here, their legal remedy developed, and their claims accrued, when the alleged wrongful eviction occurred.

[3]While the claim preclusion doctrine compels this court to conclude that the Washingtons were barred from asserting the underlying causes of action for damages in the district court, we clarify that nothing in this order prevents the Washingtons from filing a renewed motion to seal their eviction case in the justice court. *See* NRS 40.2545(3)(b)(2) (providing that a court may seal an eviction case court file for a summary eviction action upon motion of the tenant if "[s]ealing the eviction case court file is in the interests of justice and those interests are not outweighed by the public's interest in knowing about the contents of the eviction case court file").

Inc., 127 Nev. at 707, 262 P.3d at 1139 ("[A]ll claims *based on the same facts and alleged wrongful conduct* that were or could have been brought in the first proceeding are subject to claim preclusion." (emphasis added)); *Five Star Capital Corp.*, 124 Nev. at 1058, 194 P.3d at 715 ("[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.").

We are cognizant of the hardships that befell the Washingtons and mindful of their concerns regarding their summary eviction proceeding. However, for the reasons detailed above, the procedural posture of this case requires us to conclude that the justice court's order dismissing the Washingtons' small claims case with prejudice had preclusive effect on the Washingtons' district court claims. Thus, the district court did not err in granting respondents' motion to dismiss pursuant to the claim preclusion doctrine.[4] Accordingly we,

AFFIRM the district court's order granting respondents' motion to dismiss.

_____, C.J.
Bulla

_____, J.
Gibbons

_____, J.
Westbrook

[4]Insofar as the Washingtons have raised other arguments not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.

cc: Hon. Anna C. Albertson, District Judge
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