

*This opinion is nonprecedential except as provided by  
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A20-1627**

Gary Gruett,  
Appellant,

vs.

Victoria Labriola, et al.,  
Respondents.

**Filed October 11, 2021  
Affirmed  
Halbrooks, Judge\***

Dakota County District Court  
File No. 19HA-CV-20-912

Mark A. Olson, Olson Law Office, Burnsville, Minnesota (for appellant)

Kay Nord Hunt, Michelle K. Kuhl, Barry A. O'Neil, Lommen Abdo, P.A., Minneapolis,  
Minnesota (for respondents)

Considered and decided by Hooten, Presiding Judge; Smith, Tracy M., Judge; and  
Halbrooks, Judge.

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to  
Minn. Const. art. VI, § 10.

## NONPRECEDENTIAL OPINION

**HALBROOKS**, Judge

Appellant challenges the dismissal of his complaint seeking damages for breach of contract resulting from the sale of a commercial property in 2014. Because we conclude that his claims are precluded by res judicata, we affirm.

### FACTS

Appellant Gary Gruett and respondent Victoria Labriola<sup>1</sup> have been involved in a protracted dispute involving formerly jointly held commercial property in Rosemount (the property). Gruett, Labriola's son-in-law, and Labriola's late husband formed a partnership in the 1980s, which owned the property. Labriola inherited her husband's interest in the early 2000s. Gruett mortgaged his interest in the property to Labriola in 2006 to secure a \$225,000 loan she advanced to Gruett.

By 2008, Gruett had defaulted on a number of promissory notes and the mortgage, resulting in litigation. The parties reached a settlement agreement that included a mutual release and provisions for the disposition of the property as part of satisfying Gruett's defaults. But the property was not sold at that time.

Gruett sued Labriola in April 2012, asserting breach of contract and tortious interference. The district court dismissed Gruett's complaint for violating the Minnesota

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<sup>1</sup> Gruett also sued Labriola Investments, LLC and the Victoria B. Labriola Revocable Trust. Because Labriola is trustee of the trust and the managing partner of the now-defunct LLC, we refer to the respondents generally as "Labriola."

Rules of Civil Procedure and for attempting to “re-litigate matters finally resolved” in the 2008 settlement agreement.

In July 2012, Labriola initiated a foreclosure by advertisement with a sheriff’s sale set for August. Gruett filed another complaint, seeking to enjoin the foreclosure proceeding and asserting breach of contract, tortious interference, and abuse of process. The district court refused to issue an injunction, and in October that year dismissed the 2012 complaint with prejudice on the grounds that it raised the same claims that were settled in 2008, raised claims precluded by *res judicata*, and otherwise failed “to allege any legally cognizable claim.” The district court awarded attorney fees to Labriola. Gruett’s redemption period expired on February 28, 2013.

Undeterred, Gruett initiated a conciliation court action against Labriola in October 2013, asserting breach of fiduciary duty, breach of contract, and unlawful diversion of funds. Gruett appealed the conciliation court’s rejection of his claims and sought leave to file an amended complaint in district court. The district court granted leave to amend the complaint and set the matter for trial in April 2015. The October 2014 amended complaint sought damages for breach of contract and for “misappropriation and conversion” arising from Labriola’s alleged failure to remit rents received from the property in 2013. On the day of trial, Gruett—then proceeding *pro se*—moved to amend the complaint a second time, to continue the trial, and for additional discovery. The district court denied his motion.

The district court granted Labriola a directed verdict at the conclusion of Gruett’s case and dismissed the amended complaint with prejudice. The district court later granted

Labriola rule 9 relief, finding that Gruett “persisted in an obvious effort to use the judicial system to harass” Labriola and that previous “attempts and efforts to deter this conduct have not been heeded.” The district court deemed Gruett to be a frivolous litigant under Minn. R. Gen. Prac. 9.06(b) and imposed sanctions in the form of requiring Gruett to provide \$25,000 in security (cash or bond) before bringing any future claim against Labriola. Gruett appealed the order, and this court affirmed, noting his “history of re-litigating issues that were previously litigated or settled.” *See Gruett v. Labriola*, No. A16-0331, 2016 WL 6670720, at \*4 (Minn. App. Nov. 14, 2016). The district court again awarded attorney fees to Labriola.

Labriola sold the property to a third party in February 2014. Gruett claims that he was not notified of the 2014 sale and did not receive any proceeds. He initiated the present action in February 2020, seeking to recover a portion of the sale proceeds and rents derived from the property. Gruett alleges that the 2006 mortgage and the 2008 settlement agreement contained provisions that entitle him to receive sale proceeds and rents that were intended to survive foreclosure and that failure to remit these funds constitutes a breach of contract.

Labriola filed an answer and motions for judgment on the pleadings under Minn. R. Civ. P. 12.03 and for sanctions under Minn. R. Civ. P. 11 and Minn. Stat. § 549.211 (2020). Labriola argued that Gruett’s claims were barred by collateral estoppel, res judicata, and the statute of limitations. Gruett moved for partial summary judgment on the issues of liability for failing to split the proceeds of the 2014 sale and damages and liability for rents

received after February 2013. The district court held a hearing on all three motions in July 2020.

The district court granted Labriola's motions and denied Gruett's. The district court determined that Gruett's claims are barred by the six-year statute of limitations because his interest in the property ended when the redemption period expired on February 28, 2013, and he did not bring the claims until 2020. The district court also determined that if Gruett's claims are not barred by the statute of limitations, they are barred by res judicata. The district court awarded Labriola \$37,970.35 in attorney fees as a deterrent to future litigation. Gruett appeals the dismissal of his claims and the award of attorney fees.

## DECISION

Gruett contends that Minn. R. Civ. P. 12 relief is inappropriate and that the district court abused its discretion by its award of attorney fees. We address each argument in turn.

### **I. Labriola is entitled to judgment as a matter of law on Gruett's claims.**

Gruett first argues that we should reverse because there was confusion whether Labriola's motion was brought under Minn. R. Civ. P. 12.03 or Minn. R. Civ. P. 12.02(e) and that if the motion was properly characterized as a rule 12.03 motion, it was premature. Setting aside that Gruett's claimed confusion was raised for the first time on appeal,<sup>2</sup> our review of the record reveals that the parties and the district court understood Labriola's

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<sup>2</sup> We generally do not consider arguments raised for the first time on appeal, and arguments not made before the district court are generally forfeited. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *see also Leppink v. Water Gremlin Co.*, 944 N.W.2d 493, 501 (Minn. App. 2020) (stating "a party may not raise an issue or argument for the first time on appeal" (quotation omitted)).

motion to be made under Minn. R. Civ. P. 12.03. Labriola cited rule 12.03 in her motion papers, and the district court confirmed with both counsel at the hearing that the motions before it were for judgment on the pleadings, sanctions, and partial summary judgment. Accordingly, we reject Gruett’s argument that the scope of the proceedings was unclear or that the district court erroneously granted relief under 12.02(e).<sup>3</sup> On appeal from a rule 12.03 dismissal, we review the district court’s decision de novo “to determine whether the complaint sets forth a legally sufficient claim for relief.” *Burt v. Rackner, Inc.*, 902 N.W.2d 448, 451 (Minn. 2017) (citation omitted).

Gruett further argues that the district court erred in relying on findings from the district court order disposing of Gruett’s claims in 2015, because such findings were not contained in the pleadings in the present litigation. *See* Minn. R. Civ. P. 12.03 (stating that if “matters outside the pleadings” are considered, a motion must be “treated as one for summary judgment.”). We disagree. The complaint cited the district court case file numbers for all the previous suits between the parties, including the litigation in 2013-15 that resulted in the directed verdict. Courts are permitted “to consider documents that are embraced by the complaint, including pleadings and orders in an underlying proceeding.” *Greer v. Pro. Fiduciary, Inc.*, 792 N.W.2d 120, 126-27 (Minn. App. 2011). Moreover,

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<sup>3</sup> We also note that Gruett cites no legal authority in support of his argument that a rule 12.03 motion filed after an answer has been made is premature. *See Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971) (“An assignment of error based on mere assertion and not supported by any argument or authorities in appellant’s brief is waived and will not be considered on appeal unless prejudicial error is obvious on mere inspection.”).

“[c]ourt records and files from prior adjudicative proceedings are an appropriate subject for judicial notice.” *In re Welfare of D.J.N.*, 568 N.W.2d 170, 174-75 (Minn. App. 1997). The district court here properly considered the findings in the 2015 district court order.

Gruett also argues that the district court here made improper findings in its order by incorporating findings from the directed verdict in 2015. Because we conclude that the district court was within its authority to take notice of the 2015 district court order, we also conclude that it was not improper to reference the contents of that order in disposing of Gruett’s present claims. Based on those findings, the district court properly concluded that Labriola is entitled to judgment as a matter of law because Gruett’s claims are precluded by res judicata.<sup>4</sup>

Res judicata applies to bar subsequent claims when “(1) the earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privies; (3) there was a final judgment on the merits; [and] (4) the estopped party had a full and fair opportunity to litigate the matter.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). Res judicata also applies not only “to all claims actually litigated, but to all claims that could have been litigated in the earlier action.” *Id.* In addition, “[a] change in legal theory cannot be used to avoid res judicata.” *Paulos v. Johnson*, 597 N.W.2d 316, 319 (Minn. App. 1999), *rev. denied* (Minn. Sept. 28, 1999).

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<sup>4</sup> Gruett also contends that the district court improperly relied on documents outside the scope of a rule 12 motion in dismissing his claims. We conclude that, even if the district court improperly considered matters outside the pleadings, any resulting error is harmless. The decisive issue is the nature of Gruett’s interest in the property and whether he is entitled to any profits based on that interest. That issue is decided by matters referenced entirely within the pleadings—most notably by the 2015 directed verdict.

The district court concluded that Gruett's claims are barred because the issues he raises "were either previously brought in prior actions against the same [d]efendants, or could have been brought." We agree.

First, Gruett's present claim is based on the same set of factual circumstances as his previous claims. Subsequent actions are based on the same set of factual circumstances as prior actions if "the same evidence will sustain both actions." *Hauschildt*, 686 N.W.2d at 840-41 (quotation omitted). The evidence that Gruett presented in the 2013-15 action resulting in a directed verdict to Labriola included the 2006 mortgage and the 2008 settlement agreement. The district court determined that any interest Gruett had in the property "was extinguished by foreclosure after February 28, 2013." The evidence that Gruett argues sustains his present claim is again the mortgage and the settlement agreement. The district court here properly observed that any interest that Gruett had in the property under these documents has been adjudicated to be extinguished by the findings and conclusions of the 2015 directed verdict. The same-set-of-factual-circumstances prong of res judicata is satisfied.

Second, Gruett's present claim involves the same parties as those involved in previous actions. Gruett's previous claims involved Labriola as an individual, Labriola as trustee of the Victoria B. Labriola Revocable Trust, Labriola Investments, LLC, and himself. Gruett does not dispute that these are the same parties involved in his present claim.

Third, Gruett's previous claim reached a final judgment on its merits. After denying Gruett's request to amend his complaint a second time or for a continuance in 2015, the

district court proceeded to trial. Gruett presented his case for two days in April 2015, and Labriola moved for a directed verdict, which the district court granted. Gruett does not dispute that the district court's order dismissing Gruett's claims with prejudice in 2015 was a final judgment on the merits.

Finally, Gruett was afforded a full and fair opportunity to litigate his previous claims. The inquiry into whether a party had a full and fair opportunity to pursue his claims in previous litigation "generally focuses on whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted); *see also Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, 524 (Minn. App. 2017) (holding that the plaintiff was previously prevented from litigating a matter by operation of sovereign immunity); *In re Crablex, Inc.*, 762 N.W.2d 247, 254 (Minn. App. 2009) (holding the litigants were previously prevented from litigating a claim by a settlement agreement), *rev. denied* (Minn. Apr. 29, 2009).

Gruett contends that he was prevented from fully litigating the claims in the 2013-15 litigation because the district court denied his motion to amend the complaint a second time and to continue the case on the day of trial in April 2015. This argument is unavailing. That same district court previously granted Gruett leave to amend his complaint in October 2014, when Gruett possessed full knowledge of the material facts underlying his present claim. He personally entered into the 2006 mortgage and 2008 settlement agreement upon which he bases his claim well before October 2014. Because Gruett had the opportunity

to amend his complaint in 2014 and litigate the issue of his remaining interest in the property and rents derived from it, he had a full and fair opportunity to litigate the issue of the nature of his interest in the property—if any—in his previous actions.<sup>5</sup>

Because all four elements of *res judicata* are satisfied, Gruett is prevented from litigating any claim—including those he raises now—that “could have been litigated in the earlier action.” *Hauschildt*, 686 N.W.2d at 840. Labriola is entitled to judgment as a matter of law on Gruett’s complaint.<sup>6</sup>

## **II. The district court did not abuse its discretion by awarding rule 11 and statutory sanctions.**

The district court awarded Labriola \$37,970.35 in attorney fees as a sanction against Gruett under Minn. R. Civ. P. 11 and Minn. Stat. § 549.211. Gruett challenges this award, asserting that the award was procedurally deficient, improperly made against him instead of his counsel, inappropriate because he did not violate the statute, and generally unreasonable due to inadequate documentation of the fee amount. We review an award of sanctions for an abuse of discretion. *In re Claims for No-Fault Benefits Against*

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<sup>5</sup> We also observe that Gruett chose not to appeal from the directed verdict in 2015, but instead sought to compel arbitration after his claims had been dismissed. The district court denied the motion to compel arbitration, and Gruett sought to appeal that order as well as the order deeming him to be a frivolous litigant. We declined to hear an appeal from the denial of his arbitration motion and determined that he was “precluded from raising issues pertaining to the trial and the dismissal of appellants’ claims” for failing to appeal from the directed verdict itself. *Gruett v. Labriola*, No. A16-0331 (Minn. App. Mar. 28, 2016) (order). Gruett’s own failure to challenge the district court’s determination as to his interest in the property in 2015 precludes what we construe his attempt to do so here.

<sup>6</sup> We note that the district court based its order not only on *res judicata* but also the application of the statute of limitations and collateral estoppel. Because we conclude that *res judicata* is dispositive, we do not consider the other grounds for relief raised.

*Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn. App. 2006), *rev. denied* (Minn. Nov. 22, 2006). A district court abuses its discretion when a sanctions award is based on an erroneous view of the law or when no reasonable person would agree with the assessment that the sanctions were appropriate. *Miller v. Lankow*, 801 N.W.2d 120, 127 (Minn. 2011); *Patton v. Newmar Corp.*, 538 N.W.2d 116, 119 (Minn. 1995).

In awarding sanctions, the district court determined that, although Gruett’s counsel may have brought his claims “under their own independent analysis and in good faith,” Gruett nonetheless “is and should be aware” that the relevant facts do not support his renewed attempt at litigation. The district court reaffirmed Gruett’s status as a frivolous litigant and observed that previous sanctions “have been ineffective” in preventing him from bringing claims “arising from the same set of operative facts.” As to the award of attorney fees as a sanction, the district court determined that Labriola’s request was procedurally proper<sup>7</sup> and that awarding fees was appropriate because Gruett “increased the costs of litigation” by his actions. Ultimately, the district court awarded this sanction because Gruett “has continued to file frivolous claims against” Labriola, that he must refrain from doing so, and because “[p]revious efforts to deter” Gruett “have been unsuccessful.”

The present action marks Gruett’s fourth attempt to collect money from Labriola in connection to a property he has had no interest in since early 2013. He has previously been

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<sup>7</sup> Gruett concedes on appeal that he made no procedural challenge to the sanctions motion in district court. A party may not raise an issue or argument for the first time on appeal. *Leppink*, 944 N.W.2d at 501. We nevertheless note that our review indicates that the procedural requirements of Minn. Stat. § 549.211 were satisfied.

adjudicated to be a frivolous litigant. He was subject to sanctions in the amount of \$20,000 in attorney fees in connection with his previous claim, and he was under a requirement to post \$25,000 in security before bringing his present claim. As large monetary sanctions did not deter Gruett from bringing his present claim, it is not objectively unreasonable to award attorney fees to Labriola as a sanction and a deterrent to Gruett in the future. The district court properly exercised its discretion in its award.

**Affirmed.**