STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0404

Willow Run Partners,
Appellant,

vs.

Scott D. Hillstrom, et al.,
Respondents,

Michael W. Haag, et al.,
Respondents,

Paul Chamberlain, et al.,
Respondents,

Paul Overson,
Respondent,

Daniel Schultz, deceased,
Respondent,

Lyle Olson,
Respondent,

G. T. Mork,
Respondent,

Marilyn Smith, et al.,
Respondents,

Florence Francis,
Respondent.

Filed January 31, 2022
Affirmed
Cochran, Judge

Hennepin County District Court
File No. 27-CV-20-7507

Matthew L. Thornton, Matthew L. Thornton, P.L.C., St. Paul, Minnesota (for appellant)

Robert W. Vaccaro, M. Gregory Simpson, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondents Scott D. Hillstrom, Andrew R. Lewis, and Guardian Law Group, LLC)

Charles E. Jones, Megan J. Renslow, Moss & Barnett, P.A., Minneapolis, Minnesota (for respondents Michael W. Haag, Wyatt S. Partridge, and Foley & Mansfield, PLLP)

Kay Nord Hunt, Michelle K. Kuhl, Keith J. Broady, Lommen Abdo, P.A., Minneapolis, Minnesota (for respondent Paul Overson)

Peter C. Hennigan, Barry A. Gersick, Maslon LLP, Minneapolis, Minnesota (for respondent Daniel Raymond Schultz)

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Daniel M. Eaton, Christensen Law Office PLLC, Minneapolis, Minnesota (for respondents Marilynn Smith and Janet Lahna)

Considered and decided by Connolly, Presiding Judge; Cochran, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant, a limited partnership, challenges the district court's dismissal of its claims against respondents, all of whom were involved in a prior action against appellant. Because we conclude that the district court did not err in dismissing the claims, we affirm.

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

FACTS

Appellant Willow Run Partners (WRP) developed a subsidized apartment complex in Willmar, Minnesota, under a now-discontinued federal program. WRP sold the apartment complex project in 2016. In a related, prior action brought just before the closing of the sale, plaintiffs claiming to be WRP general partners sued WRP, its managing general partner, and others involved in the operation of WRP, alleging mismanagement of WRP and claiming an interest in the sale proceeds. Following the resolution of that case, WRP filed the present action against several of the parties to the prior action, their attorneys, a court-appointed receiver, and the receiver's attorney. The following summarizes the procedural history relevant to this appeal.

Background

WRP, a limited partnership, was formed in 1973. The original general partners of WRP were two brothers—Dempsey Mork and respondent G.T. Mork—and a corporation named Mork & Associates Inc. Mork & Associates, in turn, was owned by Dempsey Mork, G.T. Mork, and their uncle, Russ Mork. When Russ Mork later died, any interest he had in Mork & Associates, and consequently WRP, passed to his two daughters, respondents Marilynn Phyllis Smith and Janet Lahna. Also during the 1970s, G.T. Mork sold or otherwise relinquished his individual partnership interest in WRP. While G.T. Mork has claimed a continuing interest in WRP through Mork & Associates, WRP contends that Mork & Associates was a "sham corporation that never existed." Dempsey Mork has served as the managing general partner of WRP since its formation.

In 2015, the United States Department of Housing and Urban Development (HUD) filed a lawsuit against WRP, Dempsey Mork, and G.T. Mork. HUD alleged that two property managers of the apartment-complex project, who were supervised by Dempsey Mork, had embezzled $250,000 from WRP. HUD also alleged that WRP had withheld "excess rents." The HUD lawsuit resulted in a settlement agreement, under which WRP agreed to pay HUD $260,000, and the property managers accused of embezzlement agreed to pay HUD $250,000. The settlement agreement freed G.T. Mork of any liability.

The Prior Action

In 2016, following the resolution of the HUD lawsuit, WRP agreed to sell the apartment-complex project. Just two days before the closing of the sale, G.T. Mork, Russ Mork's daughters (Smith and Lahna), and Mork & Associates (together, the prior-action plaintiffs) sued WRP, Dempsey Mork, and related individuals and business entities. The plaintiffs as a group were represented by respondents Scott D. Hillstrom, Andrew R. Lewis, and their law firm, Guardian Law Group LLC (collectively, the Hillstrom respondents), as well as respondents Michael W. Haag, Wyatt S. Partridge, and their law firm, Foley & Mansfield PLLP (collectively, the Foley respondents), as co-counsel. Through their purported interest in Mork & Associates, the plaintiffs claimed an interest in the sale proceeds of the apartment-complex project and requested that the district court determine the rightful claimants to the proceeds. The complaint also alleged that Dempsey Mork had mismanaged WRP and violated his duties to the plaintiffs as WRP's managing general partner. In that same lawsuit, WRP and Dempsey Mork brought a counterclaim against the prior-action plaintiffs for tortious interference with a prospective business relationship.

The sale of the apartment-complex project was completed in October 2016, netting proceeds of approximately two million dollars. By stipulation, the parties agreed to escrow the proceeds until resolution of the action.

In January 2017, the prior-action plaintiffs moved for appointment of a receiver to distribute the sale proceeds and wind up the partnership. The district court granted the motion based upon "well founded" allegations that Dempsey Mork was mismanaging WRP. The court appointed respondent Daniel Schultz, a certified public accountant, to act as receiver for WRP. Schultz hired an attorney, respondent Paul Overson, to represent Schultz in his capacity as receiver. Schultz thereafter filed a report with the district court, in which he proposed an allocation and distribution schedule of the sale proceeds. Schultz also requested that WRP pay him total compensation of approximately $350,000 for serving as receiver, including $50,000 that he had already received. WRP and Dempsey Mork challenged Schultz's proposed distributions, argued that Schultz should not receive any compensation, and moved to discharge Schultz as receiver for cause. WRP and Dempsey Mork asserted that Schultz should be discharged and not compensated, in part, because Schultz was not qualified to be receiver and failed to disclose his prior relationship, and that of his accounting firm, with G.T. Mork.

Prior to any hearing on the matter, the parties agreed to waive their pleaded claims and counterclaim. They agreed to limit the district court's decision to the following issues: whether to approve or modify Schultz's proposed allocation and distribution schedule, the amount Schultz should be compensated, whether Schultz should be discharged as receiver, and whether Dempsey Mork should be ordered to disgorge certain

funds that he transferred to another company in which he had an interest. The district court then held an eight-day evidentiary hearing on these issues. WRP and Dempsey Mork called an expert witness to challenge Schultz's distribution proposal.

The district court issued its findings of fact, conclusions of law, and order in April 2019 and issued an amended order in May 2019. With respect to Dempsey Mork, the district court concluded that "there were deficiencies in his management" of WRP but that the evidence presented at the hearing failed to bear out the plaintiffs' contention that he blatantly disregarded his duties as managing general partner or "milked WRP to unjustly enrich himself." Regarding the distribution of the sale proceeds, the district court rejected many of Schultz's recommendations based on its determination that Schultz's economic analysis was flawed and that Schultz had misinterpreted state law and WRP's limited partnership agreement.

The district court then addressed WRP and Dempsey Mork's complaints about Schultz's conduct as receiver. The district court agreed with many of WRP's complaints about Schultz. It found that, while Schultz was "a highly qualified accountant," his flawed economic analysis of the project "call[ed] into question his expertise in this area." The district court further found that Schultz failed to disclose a "prior financial relationship" with G.T. Mork and improperly met with G.T. Mork and his attorney, Hillstrom. The court determined that this conduct "damaged [Schultz's] impartiality and biased him against . . . Dempsey Mork." The court also concluded that Schultz violated state law and the district court's order appointing him by making a payment to counsel for the plaintiffs from WRP funds without court approval.

The district court determined that these failings "led [Schultz] to what the [c]ourt concludes is an erroneous recommendation and a failure to aggressively pursue the protection and marshalling of the partnership assets and caused the partnership and the parties to incur heavy litigation expenses." Nonetheless, the district court rejected the argument that Schultz engaged in "collusion and deception" with the other plaintiffs and determined that "the evidence falls short of intentional wrongdoing." Based on its findings, the district court reduced Schultz's proposed fee by one-half—ordering that WRP pay him only an additional $125,000 on top of the $50,000 he had already been paid. It also granted WRP and Dempsey Mork's request to discharge Schultz for cause.

Following the district court's discharge of Schultz as receiver, Schultz transferred $125,000—the amount of his receivership fee—from WRP's bank account to his personal bank account without the permission of WRP.

The Present Action

In May 2020, WRP commenced the present action. WRP named as defendants all prior-action plaintiffs except for Mork & Associates—including G.T. Mork, Smith, and Lahna—as well as those parties' attorneys in the prior action—the Hillstrom respondents and the Foley respondents.[1] WRP also named as defendants receiver Schultz and his

[1] WRP also asserted claims in the present action against respondents Florence Francis and attorneys Paul W. Chamberlain, Ryan Richard Kuhlmann, and their law firm, Chamberlain Law Firm PLLC (collectively, the Chamberlain respondents). Francis intervened in the prior action, claiming that she was also entitled to a share of the proceeds from the sale of the apartment-complex project. The Chamberlain respondents represented Francis in that action. Because WRP does not challenge the district court's dismissal of the claims against Francis or the Chamberlain respondents, we do not discuss those parties or the claims against them in this appeal.

attorney in the prior action, Overson. In a 50-page complaint, WRP raised 16 counts, alleging breaches of fiduciary duty, theft by fraudulent misrepresentation, abuse of process, unjust enrichment, and related "aiding and abetting" claims against various defendants.

WRP asserted that, by bringing the prior action, each of the defendants "separately, and all of them collectively, engaged in a willful pattern of outrageous and intolerable conduct involving the willful and systematic representation of a false narrative against WRP's general partner that included a malicious design to force WRP to undergo protracted, expensive, and frivolous litigation." The essence of WRP's claims in the present action is that the prior action was improper and that the attorneys, their clients, and the receiver conspired to cause WRP to incur significant expenses in that action.

The defendants moved to dismiss WRP's complaint. The district court dismissed 15 of the 16 counts, each on the basis that WRP had failed to state a claim upon which relief can be granted pursuant to Minn. R. Civ. P. 12.02(e). The district court declined to dismiss only count 1, which alleged breach of fiduciary duty against attorney Hillstrom and Guardian Law Group.

WRP appeals, challenging the district court's dismissal of 11 counts raised in its complaint.

In addition, WRP brought one claim against Lyle E. Olson, who is an accountant and former business partner of Schultz. Olson is the only defendant who did not move to dismiss WRP's complaint. The single abuse-of-process claim against Olson (count 8) therefore survives.

DECISION

A district court properly dismisses a claim under rule 12.02(e) "only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." *State by Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 594 (Minn. 2021) (quotation omitted). We review a district court's rule 12.02(e) decision de novo. *Id.* In conducting our review, we "accept the facts alleged in the complaint as true and construe all reasonable inferences in favor of the plaintiff." *Id.*

On appeal, WRP challenges the district court's dismissal of 11 of the counts raised in its complaint—counts 2-5, 8-13, and 16. We address each of those counts below.

I. The district court did not err by dismissing WRP's claim of theft by fraudulent misrepresentation against Schultz (count 2).

Count 2 in WRP's complaint alleges theft by fraudulent misrepresentation against Schultz. This claim is based on WRP's allegation that, following Schultz's discharge as receiver in the prior action, Schultz transferred the remainder of his receivership fee—$125,000—from WRP's bank account to his personal bank account without WRP's permission. The district court dismissed count 2 on the basis that WRP failed to sufficiently allege damages. For the following reasons, we affirm the district court's decision to dismiss count 2.

To state a claim for fraudulent misrepresentation, a plaintiff must plead, among other elements, that "the party suffered pecuniary damage as a result of the reliance." *Hoyt Props., Inc. v. Prod. Res. Grp., LLC*, 736 N.W.2d 313, 318 (Minn. 2007) (quotation

omitted). Under Minnesota law, "damages for misrepresentation are limited to the actual out-of-pocket loss sustained by the plaintiff as a proximate result of the defendant's fraud." *TCI Bus. Cap., Inc. v. Five Star Am. Die Casting, LLC*, 890 N.W.2d 423, 434 (Minn. App. 2017) (quoting *Strouth v. Wilkison*, 224 N.W.2d 511, 514 (Minn. 1974)).

WRP argues that the district court erred by dismissing count 2 because it is entitled to recover both actual and punitive damages from Schultz. With respect to its claim for actual damages, WRP contends that it is entitled to recover: (1) the full $125,000 that it alleges Schultz wrongfully transferred from its bank account, (2) interest it would have earned had the $125,000 remained in its bank account until it transferred the money to Schultz itself, and (3) an additional $10 that it incurred as a transfer fee when Schultz transferred the money to himself. WRP further asserts that punitive damages are appropriate in this case because Schultz's conduct in taking the $125,000 without permission demonstrated a deliberate disregard for the rights of WRP. We are not persuaded.

First, WRP's contention that it is entitled to actual damages is unavailing. Its claim that Schultz must forfeit $125,000 fails under the out-of-pocket-loss rule. The district court in the prior action ordered that Schultz was entitled to that money as compensation for serving as receiver. Although WRP alleges that Schultz transferred the $125,000 to himself at a point in time when he was not authorized to do so, Schultz was undisputedly entitled to that money. Accordingly, WRP has not sustained an out-of-pocket loss in that amount.

WRP's additional contentions that it is entitled to recover actual damages in the amount of a $10 transfer fee plus interest fare no better. Minnesota courts have declined

to reverse a district court's decision where an alleged error resulted in de minimis harm to the aggrieved party. *See, e.g.*, *Peterson v. Sorlien*, 299 N.W.2d 123, 129 n.1 (Minn. 1980) (declining to reverse judgment for defendant where plaintiff would be entitled to only nominal damages); *Risk ex rel. Miller v. Stark*, 787 N.W.2d 690, 693, 694 n.1 (Minn. App. 2010) (stating that district court's failure to account for $400 in value of land worth $99,900 and with $54,900 in equity was de minimis error and declining to remand), *rev. denied* (Minn. Nov. 16, 2010). WRP's claim that it has incurred damages of $10 plus interest would amount to a very small sum. Accordingly, we conclude, under these circumstances, that reversal is not warranted based on WRP's argument that it is entitled to actual damages.

Second, WRP's contention that it is entitled to punitive damages fails in light of Schultz's recent death. Schultz died in September 2021, while this appeal was pending. Under Minnesota law, a party cannot recover punitive damages from a deceased tortfeasor. *Thompson v. Est. of Petroff*, 319 N.W.2d 400, 408 (Minn. 1982). In *Thompson*, the supreme court explained that the purpose of punitive damages is to punish the tortfeasor and deter that person from repeating the wrongful act, but if the tortfeasor has died, "no need exists for either punishment or deterrence." *Id.*

WRP urges us to create an exception to the rule announced in *Thompson*, contending that "[t]he theft of money by a court appointed fiduciary from a litigant (the fiduciary's beneficiary) is the type of extraordinary conduct that should be deterred because it strikes at the fundamental integrity of the civil justice system." WRP further contends that, even though punishment of Schultz is not available due to Schultz's death, "[d]eterrence is still

achiev[able] because [other] fiduciaries would know that their estates would be diminished by conduct subject to a claim for punitive damages." We decline WRP's request that we carve out an exception to the rule stated in *Thompson*. It is the role of the supreme court, not of the court of appeals, to determine whether a new exception to existing law is warranted. *See Jensen v. 1985 Ferrari*, 949 N.W.2d 729, 741 n.21 (Minn. App. 2020) (stating that, as an error-correcting court, the court of appeals applies existing precedent and is without authority to change the law). WRP's claim for punitive damages thus fails as a matter of law.

We therefore affirm the district court's decision to dismiss WRP's claim of theft by fraudulent misrepresentation against Schultz.

II. The district court did not err by dismissing WRP's claims of breach of fiduciary duty against Schultz and Overson (counts 3, 4, and 5) and abuse of process against Schultz (count 8).

Counts 3 and 4 of WRP's complaint allege breaches of fiduciary duty against Schultz. Count 5 alleges that Overson, Schultz's attorney, also breached his fiduciary duty to WRP. And Count 8 asserts abuse of process against Schultz. We conclude that the district court properly dismissed these claims based on the doctrine of quasi-judicial immunity.

Judicial immunity is designed to protect the judicial process by shielding judges and other persons who are "integral parts" of the judicial process from civil liability for actions performed in the exercise of their judicial authority. *Myers through Myers v. Price*, 463 N.W.2d 773, 775 (Minn. App. 1990), *rev. denied* (Minn. Feb. 4, 1991). This common-law immunity doctrine is available to court-appointed receivers. Minn.

Stat. § 576.28(a) (2020) (providing that a "receiver shall be entitled to all defenses and immunities provided at common law for acts or omissions within the scope of the receiver's appointment"). When judicial immunity is applied to persons other than judges, it is called "quasi-judicial immunity." *Myers*, 463 N.W.2d at 775. Quasi-judicial immunity extends to court-appointed receivers only for actions performed "within the scope of the receiver's appointment." Minn. Stat. § 576.28(a). The doctrine protects an actor from liability for acts done in the exercise of judicial authority, however erroneous, or by whatever motives prompted. *Linder v. Foster*, 295 N.W. 299, 300 (Minn. 1940) (quotation omitted).

The conduct of Schultz and Overson about which WRP complains in counts 3-5 and 8 falls squarely within the quasi-judicial immunity doctrine. With respect to Schultz, count 3 is based on allegations that Schultz was not qualified to serve as receiver, had conflicts of interest (in the form of a "significant financial relationship" with G.T. Mork), and failed to disclose those facts to the district court in the prior action. Count 4 is based on allegations that Schultz secretly communicated with and accepted the aid of "adverse counsel," employed his business partner, Olson—who had conflicts of interest—without notifying the court, and distributed WRP funds to Olson and the Hillstrom and Foley respondents without notifying the court. And count 8 alleges that Schultz was a "perpetrator[] of . . . fraud and . . . abuse of process." Specifically, count 8 appears to allege that Schultz, as the other respondents' "hand chosen" receiver, participated in a "conspiracy" to gain control of the sale proceeds of the apartment-complex project. The essence of these claims is that Schultz improperly performed his duties as receiver. All of

these allegations therefore relate to actions performed within the scope of Schultz's court appointment.

We reach a similar conclusion with respect to Overson. Count 5 of WRP's complaint alleges that Overson acquiesced in, authorized, or failed to subsequently disclose Schultz's actions to the district court. These allegations entirely relate to Overson's performance of his duties in his capacity as the receiver's attorney. *See* Minn. Stat. § 576.32, subd. 1(a) (2020) (providing that the receiver may employ attorneys "[t]o represent or assist the receiver in carrying out the receiver's duties"). Because the alleged misconduct of Schultz and Overson constitutes "acts done in the exercise of judicial authority," *Linder*, 295 N.W. at 300 (quotation omitted), the receiver and his attorney are entitled to the protection of quasi-judicial immunity.

We are not persuaded by WRP's arguments to the contrary. First, WRP contends that quasi-judicial immunity does not apply to Schultz because Schultz's conduct violated the law and the district court's order appointing him. But Minnesota law is clear that the correctness of Schultz's conduct and the motivation behind it are irrelevant for the purpose of applying quasi-judicial immunity. *Myers*, 463 N.W.2d at 775 (stating that judicial immunity shields an actor from liability for conduct "however erroneous or by whatever motives prompted" (quotation omitted)). Whatever the propriety of Schultz's actions, he engaged in those actions within the scope of his appointment as receiver and is therefore protected by the immunity doctrine.[2]

[2] WRP cites our nonprecedential decision in *Dahl v. Quinn*, No. A20-0468, 2020 WL 6852631 (Minn. App. Nov. 23, 2020), to support its assertion that the district court erred

Second, WRP contends that application of quasi-judicial immunity to Schultz and Overson violates public policy and damages the judicial process. But shielding Schultz and Overson from civil liability based on quasi-judicial immunity did not preclude WRP from challenging or obtaining relief from their actions. In the prior action, WRP had an opportunity to challenge—and did in fact challenge—many aspects of Schultz's conduct, his distribution proposal, and his compensation. WRP also moved to discharge Schultz as receiver. The district court agreed with many of WRP's complaints about Schultz, discharged him, and reduced his compensation accordingly. Moreover, with respect to Overson, WRP could have challenged the payment of his attorney fees, which the district court in the prior action approved. We are therefore unconvinced by WRP's public-policy argument.

Accordingly, we conclude that the district court did not err by dismissing WRP's claims against Schultz and Overson in counts 3-5 and 8 on the basis of quasi-judicial immunity.[3]

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by dismissing counts 3-5 and 8 with respect to Schultz and Overson. WRP's reliance on *Dahl* is misplaced because *Dahl* is both factually distinguishable and nonprecedential. In *Dahl*, the defendant, who was a child-custody evaluator, moved to dismiss a defamation claim on the basis that she was entitled to quasi-judicial immunity. *Dahl*, 2020 WL 6852631, at *1. We affirmed the district court's decision to deny the motion to dismiss, emphasizing "the very limited record" and concluding that we knew "too little" at that early stage of the litigation about the custody evaluator's "court appointment and the meeting at which she allegedly made the challenged statements." *Id.* at *4. In contrast to *Dahl*, the record in this case contains much more detailed information regarding the district court's order appointing Schultz as receiver, Schultz's conduct as receiver, and WRP's allegations against Schultz and Overson. Accordingly, the record before us provides a sufficient basis for our conclusion that Schultz and Overson are protected by quasi-judicial immunity.

[3] Overson also contends that we should affirm the district court's dismissal of WRP's claim of breach of fiduciary duty against him (count 5) on the basis that he did not owe a fiduciary

III. The district court did not err by dismissing WRP's claims of abuse of process against the Hillstrom respondents, Foley respondents, G.T. Mork, Smith, and Lahna (count 8).

In the remaining allegations in count 8, WRP contends that the Hillstrom and Foley respondents and their clients G.T. Mork, Smith, and Lahna engaged in a "conspiracy" against WRP. Specifically, WRP alleges that the Hillstrom and Foley respondents and their clients made bad-faith claims that G.T. Mork, Smith, and Lahna were stockholders in Mork & Associates in order to "[c]ontriv[e] standing to sue"; made unfounded claims against Dempsey Mork in order to have Schultz appointed as receiver and gain control of the sale proceeds; and failed to disclose that Schultz was not independent of the parties and was unqualified. For the reasons that follow, we conclude that the district court properly dismissed count 8 with respect to these parties on the basis of absolute privilege.

Absolute privilege "shields a speaker from liability for statements made in judicial proceedings." *Expose v. Thad Wilderson & Assocs., P.A.*, 889 N.W.2d 279, 286 (Minn. 2016). The doctrine provides that "a party who files a pleading or affidavit in a judicial proceeding has absolute immunity, though his statements are defamatory and malicious, if they relate to the subject of inquiry." *Matthis v. Kennedy*, 67 N.W.2d 413, 419 (Minn. 1954) (quotation omitted). "Specifically, the doctrine may apply where a statement is (1) made by a judge, attorney, or witness; (2) made at a judicial or quasi-judicial proceeding; and (3) relevant to the subject matter of the litigation." *Expose*,

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duty to WRP. Because we affirm dismissal of that claim on the basis of quasi-judicial immunity, we need not reach Overson's alternative argument.

889 N.W.2d at 286. The doctrine extends its protection to parties and attorneys. *Matthis*, 67 N.W.2d at 417.

In addition to barring defamation claims, absolute privilege "also bars claims sounding in defamation—that is[,] claims where the injury stemmed from and grew out of the defamation." *Mahoney & Hagberg v. Newgard*, 729 N.W.2d 302, 309 (Minn. 2007). "[T]he immunity rule is not to be 'scuttled' by pleadings which allege that the wrongful acts resulted from a conspiracy." *Jenson v. Olson*, 141 N.W.2d 488, 490-91 (Minn. 1966).

The absolute-privilege doctrine applies to WRP's abuse-of-process claim against the Hillstrom and Foley respondents, G.T. Mork, Smith, and Lahna. The crux of the claim is that the Hillstrom and Foley respondents and their clients made false statements in the prior action for the purpose of gaining control of the sale proceeds of the apartment-complex project. In particular, WRP's complaint alleged that those respondents falsely stated that G.T. Mork, Smith, and Lahna had an interest in WRP as shareholders in Mork & Associates and made unfounded claims against Dempsey Mork in order to get Schultz (who was biased and unqualified) appointed as receiver. Such an allegation sounds in defamation. Regardless of the label, the basis of WRP's abuse-of-process claim is that the respondents made false statements when they knew those statements would harm WRP. Moreover, because the alleged false statements were made by attorneys on behalf of the parties in the prior action, and because those statements also related to the subject matter of the litigation, the other requirements of absolute privilege are met.

Minnesota courts "will apply absolute privilege only when the administration of justice requires complete immunity from being called to account for language used."

Expose, 889 N.W.2d at 286 (quotation omitted). Before applying the doctrine, a court must "determine whether there are competing policy interests that would counsel against application of the privilege." *Id.* (quotation omitted). One competing policy interest is "the need to adequately punish and discourage litigation misconduct." *Mahoney*, 729 N.W.2d at 309 (quoting *Matsuura v. E.I. du Pont de Nemours & Co.*, 73 P.3d 687, 697 (Haw. 2003)). WRP appears to argue that this policy interest bars application of absolute privilege in this case. To support that proposition, WRP relies on the Supreme Court of Hawaii's decision in *Matsuura.* There, in response to a certified question posed by the United States District Court for the District of Hawaii, the Supreme Court of Hawaii concluded that, "[u]nder Hawai'i law, a party is not immune from liability for civil damages based upon that party's fraud engaged in during prior litigation proceedings." *Matsuura*, 73 P.3d at 706. WRP's reliance on *Matsuura* is misplaced. In addition to not binding this court, *Matsuura* is factually distinct. *Matsuura* involved allegations of extensive discovery fraud, including the withholding and destruction of evidence. *Id.* at 689, 692. The allegations in that case are very different from the false statements alleged in this case, which sound in defamation. We discern no policy interests at issue in this case that would bar application of absolute privilege.

WRP also relies on *Estate of Mayer v. Lax, Inc.*, 998 N.E.2d 238, 251 (Ind. Ct. App. 2013), in which the Indiana Court of Appeals concluded that absolute privilege does not apply to an abuse-of-process claim under Indiana law. But Minnesota courts have not reached any similar conclusion. WRP's reliance on case law from other jurisdictions is unavailing.

We therefore conclude that the absolute-privilege doctrine bars WRP's abuse-of-process claim against the Hillstrom respondents, Foley respondents, G.T. Mork, Smith, and Lahna, and the district court did not err by dismissing count 8 with respect to those parties.

IV. The district court did not err by dismissing counts 9-13 and 16 against the Hillstrom respondents, Foley respondents, and G.T. Mork.

Counts 9, 10, 12, 13, and 16 are based upon allegations that Schultz improperly paid attorney fees from WRP funds to the Hillstrom and Foley respondents for legal services the attorneys performed for G.T. Mork, Smith, and Lahna in the prior action. These counts allege that the Hillstrom respondents, Foley respondents, and G.T. Mork engaged in the following: theft by fraudulent misrepresentation (count 9), unjust enrichment (count 10), aiding and abetting Schultz's breach of fiduciary duty (count 12), aiding and abetting theft by fraudulent misrepresentation (count 13), and aiding and abetting unjust enrichment (count 16).[4] Count 11 additionally asserts that the Hillstrom respondents, Foley respondents, and G.T. Mork "aided and abetted" Schultz's breach of fiduciary duty by supporting Schultz's appointment as receiver in the prior action. The district court dismissed all of these counts on the basis of res judicata. We agree with the district court.

The doctrine of res judicata bars a subsequent claim 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*,

[4] WRP also asserted claims against Smith and Lahna in counts 9, 11-13, and 16. On appeal, WRP does not challenge the district court's dismissal of those counts as against Smith and Lahna.

686 N.W.2d 829, 840 (Minn. 2004). Res judicata "is conclusive, not only as to every matter actually litigated, but also as to every matter that might have been litigated." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 715 N.W.2d 484, 487 (Minn. App. 2006), *aff'd*, 732 N.W.2d 209 (Minn. 2007). We address each res judicata factor in turn.

A. Same Set of Factual Circumstances

"The common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions." *Hauschildt*, 686 N.W.2d at 840-41 (quotation omitted). The first factor is met only if the right to assert the second claim arose at the same time as the right to assert the first claim. *Id.* at 841.

This factor is met with respect to counts 9, 10, 12, 13, and 16. These counts allege that the Hillstrom and Foley respondents secretly submitted bills to Schultz, without seeking court approval, and represented that they were entitled to have their attorney fees paid from WRP funds. WRP asserts that the Hillstrom respondents received approximately $47,000 of WRP funds from Schultz and that the Foley respondents received approximately $10,300. These counts further claim that the Hillstrom respondents encouraged G.T. Mork to present their request for payment to Schultz and that G.T. Mork did so. The "aiding and abetting" counts also allege that each of these respondents assisted one another in inducing Schultz to make the allegedly improper payments.

The central focus of the claims set forth in counts 9, 10, 12, 13, and 16 is that Schultz's payments of WRP funds to the Hillstrom and Foley respondents were improper.

The facts giving rise to these claims arose at the same time as the facts giving rise to the claims in the prior action. Regarding the payment to the Hillstrom respondents, WRP challenged that payment, which totaled approximately $47,000, during the prior action. The district court addressed the $47,000 payment, concluding that Schultz violated state law and the court's order appointing him by making that payment without the district court's approval. Nonetheless, the district court "accept[ed] [Schultz's] explanation that he viewed [the payment as for] work done to support the receivership and protect the sale proceeds," and it did not order the Hillstrom respondents to reimburse WRP for that payment. Regarding the payment to the Foley respondents, which totaled approximately $10,300, WRP did not challenge that payment in the prior action. But WRP acknowledges in its complaint in the present action that it knew about Schultz's payments to both the Hillstrom and Foley respondents during the prior action. Because WRP did challenge Schultz's payment of $47,000 to the Hillstrom respondents in the prior action and could have challenged Schultz's payment of $10,300 to the Foley respondents, the first res judicata factor is met with respect to these counts.

We likewise conclude that the first res judicata factor is met with respect to count 11. Count 11 alleges that the Hillstrom respondents, Foley respondents, and G.T. Mork aided and abetted Schultz's appointment as receiver when they presented an affidavit from Schultz to the district court in the prior action "[d]espite knowing that Schultz was not qualified" to be receiver and was not independent of the parties. WRP presented the same issues concerning Schultz's qualifications and independence to the district court in the prior action, and the district court specifically addressed those issues. Regarding Schultz's

qualifications, the district court determined that Schultz "appears to be a highly qualified accountant, but the [c]ourt has rejected his economic analysis of this Section 236 project, as well as his interpretations of the [limited partnership agreement] and state law, which calls into question his expertise in this area." With respect to Schultz's alleged conflicts of interest, the district court agreed with WRP and Dempsey Mork that Schultz had an "undisclosed prior financial relationship" with G.T. Mork. The court concluded that the conflict of interest and Schultz's meetings with G.T. Mork and Hillstrom "damaged his impartiality and biased him against . . . Dempsey Mork." After considering those allegations and others, the district court found that "the evidence falls short of intentional wrongdoing," but determined that Schultz's conflict with G.T. Mork and other failings warranted reducing his proposed compensation and discharging him. This discussion by the district court in the prior action demonstrates that it considered the allegations underlying count 11. Count 11 therefore involves the same set of factual circumstances as the prior action.

Because WRP could have raised or did raise in the prior action the allegations underlying counts 9-13 and 16, the first res judicata factor is met.

B. Same Parties or Parties in Privity

The second res judicata factor is satisfied when the parties to the second action were either parties to the first action or are in "privity" with parties to the first action. Privity exists where a person is "so identified in interest with another that he represents the same legal right." *Rucker v. Schmidt*, 794 N.W.2d 114, 118 (Minn. 2011). "Privity does not follow one specific definition, but rather expresses the idea that a judgment should also

determine the interests of certain non-parties closely connected with the litigation." *Rucker v. Schmidt*, 768 N.W.2d 408, 412-13 (Minn. App. 2009) (quotation omitted), *aff'd*, 794 N.W.2d 114 (Minn. 2011).

Here, G.T. Mork and WRP were parties to the prior action. Moreover, the Hillstrom and Foley respondents were closely connected with the litigation in the prior action. For instance, the Hillstrom and Foley respondents had an active self-interest in the prior action in ensuring validation of the attorney-fees payments made to them by Schultz from WRP funds. The second res judicata factor is therefore met.

C. Final Judgment on the Merits

For the purpose of res judicata, a final judgment is "one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *All Finish Concrete, Inc. v. Erickson*, 899 N.W.2d 557, 568 (Minn. App. 2017) (discussing the third factor in the context of collateral estoppel). There is no question that there was a final judgment on the merits in the prior action. The parties voluntarily waived their claims and counterclaim in that action and the district court's order resolved the issues litigated during the evidentiary hearing.

D. Full and Fair Opportunity to Litigate

The fourth and final res judicata factor "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." *Breaker v. Bemidji State Univ.*, 899 N.W.2d 515, 519 (Minn. App. 2017) (quoting *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001)).

WRP had a full and fair opportunity in the prior action to challenge the propriety of the attorney-fees payments and to challenge Schultz's qualifications and impartiality. WRP had every incentive to litigate those matters and it did in fact raise the issues of Schultz's qualifications and conflicts of interest, as well as Schultz's payment to the Hillstrom respondents. Moreover, there is no indication that effective litigation was limited by the nature or relationship of the parties.

WRP contends that it did not have a full and fair opportunity to litigate its claims because the district court "implicit[ly]" limited discovery in the prior action to "issues relevant to the distribution to the limited partners." But we are not persuaded that any limitation on discovery in the prior action constituted a significant procedural limitation on WRP's ability to challenge the attorney-fees payments or Schultz's qualifications or impartiality. Again, WRP knew about the attorney-fees payments while the prior action was ongoing, challenged the payment to the Hillstrom respondents, and could have challenged the payment to the Foley respondents. WRP also raised to the district court in the prior action its concerns about Schultz's conflicts of interest and qualifications. Moreover, WRP did not appeal the district court's decision in the prior action to "implicit[ly]" limit discovery.

WRP also argues that res judicata cannot apply to bar its claims in the present action because the respondents had "unclean hands." Under the unclean-hands doctrine, a court will not impose an equitable remedy if the party seeking the remedy engaged in "unconscionable" conduct "by reason of a bad motive" or if "the result induced by his conduct will be unconscionable either in the benefit to himself or the injury to others."

Hruska v. Chandler Assocs., Inc., 372 N.W.2d 709, 715 (Minn. 1985) (quotation omitted). WRP does not cite any case law in which the unclean-hands doctrine has been applied to bar application of res judicata, and we are aware of no such case law. Moreover, based upon our independent review, the actions alleged in counts 9-13 and 16 do not rise to the level of "unconscionable" conduct. We note that the district court found that Schultz and the plaintiffs in the prior action engaged in no "intentional wrongdoing" or "deliberate collusion." And the district court accepted Schultz's explanation for the $47,000 payment and did not order reimbursement of that payment. We therefore conclude that WRP had a full and fair opportunity to litigate the claims underlying counts 9-13 and 16.

Because each res judicata factor is satisfied, we conclude that the district court did not err by dismissing these counts on that basis.

Conclusion

In sum, WRP has failed to demonstrate that the district court erred by dismissing these 11 counts—counts 2-5, 8-13, and 16—of its complaint. We therefore affirm the district court's decision to dismiss those counts.

Affirmed.