STATE OF MINNESOTA
IN COURT OF APPEALS
A23-1597

McLaughlin's Detroit Lakes, LLC,
Respondent,

vs.

Franklin Outdoor Advertising Co.,
Appellant.

Filed July 1, 2024
Affirmed in part, reversed in part, and remanded
Worke, Judge

Becker County District Court
File No. 03-CV-22-762

Joshua A. Swanson, Jack M. Buck, Vogel Law Firm, Fargo, North Dakota (for respondent)

Christina Rieck Loukas, Thomas H. Boyd, Samantha F. Carmickle, Winthrop & Weinstine, P.A., Minneapolis, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Schmidt, Judge; and Florey, Judge.[*]

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant-lessee challenges the district court's grant of summary judgment in favor of respondent, the subsequent purchaser of a portion of property leased by appellant, in a

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

quiet-title action. Appellant argues that the district court erred as a matter of law when it determined that: (1) appellant failed to exercise its contractual right of first refusal (ROFR); (2) appellant's counterclaims are barred by the doctrines of res judicata and collateral estoppel; (3) respondent was a bona fide purchaser; and (4) respondent did not tortiously interfere with appellant's lease. We affirm in part based on res judicata. Because we affirm on that ground, we need not decide whether appellant exercised its ROFR, whether collateral estoppel applies, or whether respondent was a bona fide purchaser. But because there is a genuine issue of material fact as to whether respondent tortiously interfered with appellant's ROFR, we reverse in part based on the tortious-interference claim and remand for further proceedings.

FACTS

Appellant Franklin Outdoor Advertising Co. (Franklin Outdoor) sells, designs, prints, and installs billboard advertising. In April 2006, Franklin Outdoor and James Vareberg entered into a lease granting Franklin Outdoor the right to construct and maintain billboards on a portion of Vareberg's property in Detroit Lakes, Minnesota (the Subject Property). The lease was recorded with the Becker County Recorder in August 2006.

The five-year lease took effect on October 1, 2007, and provided Franklin Outdoor automatic renewal for up to two additional five-year terms, such that the lease remained in effect through September 2022. The lease provided Franklin Outdoor an ROFR that states, in part:

> In the event of any potential change in ownership of the property herein demised, [Vareberg] agrees to notify [Franklin Outdoor] of such . . . change at least thirty (30) days prior to any closing consummating said change in ownership and to include the name and address of . . . prospective purchaser(s). [Vareberg] further agrees to give and deliver . . . prospective purchaser(s) formal, written notice of the existence of this [l]ease at least thirty (30) days prior to . . . closing and agrees to grant [Franklin Outdoor] an unconditional [ROFR] to purchase [the Subject P]roperty, said right to be exercised by [Franklin Outdoor] no later than thirty (30) days after receipt of written notice of said potential change.

The lease also included a provision stating that "[the lease] shall inure to the benefit of [Franklin Outdoor] and be binding upon [Vareberg] and to [his] respective tenants, heirs, successors, personal representatives, executors, administrators, and assigns."[1]

Vareberg also owned a parcel of land to the west of the Subject Property (the Adjacent Property). In July 2021, during the term of the lease, Vareberg agreed to sell the Adjacent Property and part of the Subject Property to respondent McLaughlin's Detroit Lakes, LLC (McLaughlin's LLC). Vareberg conveyed the properties to McLaughlin's LLC on September 15, 2021. McLaughlin's LLC recorded the deed with the Becker County Recorder in October 2021. Contrary to the terms of the ROFR, Vareberg did not provide Franklin Outdoor with written notice of his intent to sell part of the Subject Property.

[1] In 2018, Vareberg transferred his property interests into a trust. For ease of reference in this opinion, we continue to refer to Vareberg as the owner of the Subject Property.

Franklin Outdoor subsequently learned of McLaughlin's LLC's ownership of the Subject Property, and in October 2021 unsuccessfully attempted to negotiate a new lease with McLaughlin's LLC. Franklin Outdoor did not attempt to exercise its ROFR.

In April 2022, McLaughlin's LLC filed this action against Franklin Outdoor seeking to quiet title. Franklin Outdoor brought counterclaims for, among other things, declaratory judgment and tortious interference with contract. Franklin Outdoor's counterclaim for declaratory judgment sought a declaration that Franklin Outdoor may purchase the Subject Property pursuant to the ROFR because McLaughlin's LLC was an heir or assign of Vareberg.

Franklin Outdoor initiated a separate action against Vareberg (the Vareberg action) for breach of the lease, specific performance, and a declaration of its rights under the lease. Franklin Outdoor similarly sought specific performance allowing Franklin Outdoor to exercise the ROFR. In February 2023, the parties to the Vareberg action settled that matter and released all claims against each other. The settlement agreement included a reservation-of-rights provision. In the Vareberg action, the parties agreed that the settlement agreement would not waive Franklin Outdoor's counterclaims against McLaughlin's LLC. The district court entered judgment, dismissing the Vareberg action with prejudice, based on a stipulation of the parties.

In September 2023, McLaughlin's LLC and Franklin Outdoor each moved for summary judgment in this action. The district court determined that there were no genuine issues of material fact that (1) McLaughlin's LLC was a bona fide purchaser for value, (2) Franklin Outdoor was not entitled to specific performance under the ROFR in its lease

with Vareberg, (3) Franklin Outdoor waived its ROFR, (4) the settlement agreement in the Vareberg action barred Franklin Outdoor's claims against McLaughlin's LLC under the doctrines of collateral estoppel and res judicata, (5) Franklin Outdoor did not make a prima facie showing supporting its slander-of-title claim,[2] and (6) McLaughlin's LLC did not tortiously interfere with the lease. The district court granted summary judgment in favor of McLaughlin's LLC on its quiet-title claim and on Franklin Outdoor's counterclaims. This appeal followed.

DECISION

A district court's summary-judgment decision is reviewed de novo to determine whether the court properly applied the law and whether there are any genuine issues of material fact. *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017). Summary judgment is proper if, based on the record, the moving party shows that "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. Appellate courts view the record in the light most favorable to the nonmoving party and resolve any doubts and factual inferences against the moving party. *Staub v. Myrtle Lake Resort, LLC*, 964 N.W.2d 613, 620 (Minn. 2021).

Franklin Outdoor makes numerous assertions of error. We begin with the assertion that the district court erred when it determined that Franklin Outdoor's claims against McLaughlin's LLC are barred under the doctrine of res judicata. Our ruling on that issue is dispositive of Franklin Outdoor's counterclaims that arise out of Vareberg's breach of

[2] Dismissal of the slander-of-title claim is not at issue in this appeal.

the ROFR in the lease, including its counterclaim for declaratory judgment. We then address the assertion that the district court erred when it granted summary judgment in favor of McLaughlin's LLC and dismissed Franklin Outdoor's counterclaim for tortious interference with contract.

Res judicata

Franklin Outdoor argues that the district court erred when it determined that the doctrine of res judicata barred its claims against McLaughlin's LLC. The application of res judicata is a question of law that appellate courts review de novo. *Mach v. Wells Concrete Prods. Co.*, 866 N.W.2d 921, 925 (Minn. 2015). The doctrine of res judicata turns on the principle that, once a case has reached a resolution, neither party, nor their privies, may relitigate "claims arising from the original circumstances." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004). Res judicata applies when (1) the earlier litigation "involved the same set of factual circumstances," (2) the earlier litigation involved "the same parties or their privies," (3) the earlier litigation reached a final judgment on the merits, and (4) the party against whom res judicata is to be applied "had a full and fair opportunity to litigate the matter." *Id.* at 840. For a claim to be precluded, all four prongs must be satisfied. *Id.* If res judicata applies, it bars not only claims for matters that were litigated but also those "that might have been litigated in the prior proceeding." *Schober v. Comm'r of Revenue*, 853 N.W.2d 102, 111 (Minn. 2013).

The district court determined that there was no issue of material fact that the four factors required to apply the doctrine of res judicata were satisfied. Franklin Outdoor does not dispute that this case involves the same factual circumstances as the Vareberg action.

Indeed, both actions arise out of the same operative facts, and in particular, Vareberg's breach of the lease by failing to notify Franklin Outdoor of his intent to sell the Subject Property so that Franklin Outdoor could exercise its ROFR. But Franklin Outdoor argues that the three remaining res judicata elements were not met. We address each in turn.

Same parties or their privies

Franklin Outdoor argues that McLaughlin's LLC was not in privity with Vareberg. "[T]he circumstances of each case must be examined to determine the nature and extent of the relationship between a formal party and the person alleged to have been in privity with that party." *Crossman v. Lockwood*, 713 N.W.2d 58, 62 (Minn. App. 2006). "'Privity' expresses the idea that as to certain matters and circumstances, people who are not parties to an action but who have interests affected by the judgment as to certain issues in the action are treated as if they were parties." *SMA Servs., Inc. v. Weaver*, 632 N.W.2d 770, 774 (Minn. App. 2001); *see also Denzer v. Frisch*, 430 N.W.2d 471, 473 (Minn. App. 1988) (stating that those in privity include those whose interests are represented by party to lawsuit).

Here, McLaughlin's LLC was not a party to the Vareberg action. Its interests, however, were directly implicated in that action. One remedy sought by Franklin Outdoor for its breach-of-contract claim in the Vareberg action was specific performance. Such a remedy would have allowed Franklin Outdoor to exercise its ROFR which would have then invalidated the purchase agreement and deprived McLaughlin's LLC of the Subject Property. That is, in effect, the same relief that Franklin Outdoor seeks in this action.

Therefore, for the purposes of res judicata, we conclude that McLaughlin's LLC was in privity with Vareberg.

Final judgment on the merits

Franklin Outdoor argues that there was not a final judgment on the merits. "A judgment based on a settlement agreement is a final judgment on the merits, but only with respect to the issues and claims actually settled." *Goldberger v. Kaplan, Strangis & Kaplan, P.A.*, 534 N.W.2d 734, 737 n.1 (Minn. App. 1995), *rev. denied* (Minn. Sept. 28, 1995). In the Vareberg action, Franklin Outdoor alleged that Vareberg had breached the lease when he failed to give Franklin Outdoor notice of his intent to sell the Subject Property and sought specific performance allowing Franklin Outdoor to exercise its ROFR. Franklin Outdoor and Vareberg settled these claims, and a judgment was entered in district court. In this action, Franklin Outdoor again seeks specific performance allowing Franklin Outdoor to exercise its ROFR based on Vareberg's breach of the lease. The issue and claim "actually settled" against Vareberg is the same issue and claim Franklin Outdoor alleges against McLaughlin's LLC. *See id.*

Franklin Outdoor nevertheless argues that its claims against McLaughlin's LLC were preserved by the reservation-of-rights language in the settlement agreement. We agree to the extent that such claims arise out of McLaughlin's LLC's own conduct in relation to the ROFR, in particular, its alleged tortious interference with the ROFR. But Franklin Outdoor attempts to go one step further, arguing that McLaughlin's LLC became subject to the ROFR as an heir or assign of Vareberg when it purchased the Subject Property and that it therefore can be required to remedy Vareberg's breach of the ROFR

through specific performance. Effectively, Franklin Outdoor argues that McLaughlin's LLC can be held liable on a claim that Vareberg breached the ROFR in the lease, even though Franklin Outdoor settled that very claim in the Vareberg action and final judgment was entered in that action. Franklin Outdoor identifies no authority to support this result, and we are aware of none.[3] We therefore reject Franklin Outdoor's argument that the settlement agreement preserved claims against McLaughlin's LLC arising out of Vareberg's breach.

Full and fair opportunity to litigate the matter

Franklin Outdoor argues that it did not have a full and fair opportunity to litigate its counterclaims against McLaughlin's LLC in the Vareberg action. In general, this factor addresses whether there were "significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether the 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). Franklin Outdoor does not claim that a procedural limitation precluded it from fully litigating the issues in the Vareberg action, and we therefore conclude this element is satisfied.

In sum, the record shows that there is no genuine issue of material fact that the four elements of res judicata have been satisfied for the preclusion of claims based on

[3] We are not persuaded by Franklin Outdoor's reliance on *Hentschel v. Smith*, 153 N.W.2d 199 (Minn. 1967). In that case, the supreme court held that a city's settlement with a passenger in a vehicle involved in a collision with a city vehicle did not preclude the city from bringing claims against the driver of the vehicle carrying the passenger. *Hentschel*, 153 N.W.2d at 207-08. The supreme court reasoned that the passenger and the driver were not in privity, which would be required for the doctrine of res judicata to apply. *Id.* at 206.

Vareberg's breach of the lease. Because we affirm the district court's summary-judgment decision based on res judicata, we decline to address Franklin Outdoor's arguments as to whether McLaughlin's LLC breached the ROFR in the lease, whether collateral estoppel applies, and whether McLaughlin's LLC was a bona fide purchaser. We affirm the district court's grant of summary judgment as to all claims on appeal except Franklin Outdoor's counterclaim for tortious interference with contract, which we address below.

Tortious interference

Franklin Outdoor argues that the district court erred when it determined that there was no genuine issue of material fact that McLaughlin's LLC did not tortiously interfere with the lease when it purchased the Subject Property. We agree.

"A cause of action for tortious interference with [a] contract has five elements: (1) the existence of a contract; (2) the alleged wrongdoer's knowledge of the contract; (3) intentional procurement of its breach; (4) without justification; and (5) damages." *Sysdyne Corp. v. Rousslang*, 860 N.W.2d 347, 351 (Minn. 2015) (quotation omitted).

The record shows that there is no genuine issue of material fact that: a contract existed in the form of a lease, McLaughlin's LLC knew of the lease, McLaughlin's LLC would not have been justified in procuring Vareberg's breach of the lease, and Franklin Outdoor was damaged by Vareberg's breach. Therefore, the only issue is whether McLaughlin's LLC intentionally procured Vareberg to breach his lease with Franklin Outdoor. *See id.* "Tortious interference with contract concerns interference which . . . prevents performance . . . of a contract." *Schumacher v. Ihrke*, 469 N.W.2d 329, 332 (Minn. App. 1991) (quotation omitted). Based on our review of the record, we conclude

that there is a question of material fact as to whether McLaughlin's LLC intentionally procured Vareberg's breach.

Affirmed in part, reversed in part, and remanded.