

THE UTAH COURT OF APPEALS

IN THE MATTER OF THE  
WAYNE C. INGLEDEW TRUST.

DALE INGLEDEW, CLIFFORD INGLEDEW, AND EDWARD INGLEDEW,  
Appellants,

*v.*

GRANT H. INGLEDEW,  
Appellee.

Opinion  
No. 20200344-CA  
Filed December 16, 2021

Third District Court, Salt Lake Department  
The Honorable Keith A. Kelly  
No. 193902076

J. David Milliner and Jacob B. Stone, Attorneys  
for Appellants

R. Zenock Bishop, Attorney for Appellee

JUDGE MICHELE M. CHRISTIANSEN FORSTER authored this Opinion,  
in which JUDGES JILL M. POHLMAN and RYAN D. TENNEY  
concur.

CHRISTIANSEN FORSTER, Judge:

¶1 In 2018, Appellant Dale Ingledew<sup>1</sup> filed a petition against his brother Grant, seeking to invalidate the Wayne C. Ingledew Trust, a trust created by their father, Wayne Ingledew. The petition alleged that Grant had exercised undue influence over

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1. Because the parties all share the same last name, we refer to each by first name, with no disrespect intended by the apparent informality.

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Wayne in connection with the creation of the trust. It further alleged that Grant, acting as trustee, had failed to provide a proper accounting of trust assets and had improperly used trust assets to pay for personal expenses. The district court entered summary judgment in favor of Grant and dismissed the petition, ruling the trust was valid and Grant, acting as trustee, had not breached any fiduciary duties.

¶2 Dale and his brothers, Clifford and Edward, (collectively, Appellants) then filed a second petition seeking to remove Grant as trustee or, in the alternative, for an injunction restraining his discretion. Grant again moved for summary judgment, this time based on the doctrine of res judicata, which the court granted.

¶3 Appellants now challenge the district court's grant of summary judgment on their second petition, arguing the court erred in concluding their claims were barred by res judicata. We disagree and affirm.

BACKGROUND<sup>2</sup>

¶4 In 1985, Wayne created the Wayne C. Ingledew Family Trust (the 1985 Trust). Under the 1985 Trust, Wayne's assets were to be divided equally among his nine children after his death. Wayne named himself as trustee, his son Robert as first successor trustee, and his son Dale as second successor trustee.

¶5 In 2010, without the knowledge of his children (except for Grant), Wayne revoked the 1985 Trust and created a new trust, the Wayne C. Ingledew Trust (the 2010 Trust). Wayne and Grant

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2. When reviewing a grant of summary judgment, we view the facts and all reasonable inferences in the light most favorable to the nonmoving parties. *Anderson Dev. Co. v. Tobias*, 2005 UT 36, ¶ 31, 116 P.3d 323.

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were named co-trustees of the 2010 Trust, with Grant to become the sole trustee upon Wayne's death. After creating the 2010 Trust, Wayne conveyed all his major assets—consisting of five parcels of real property that he owned—to the trust: his personal residence (Wayne's House); an empty lot (the Empty Lot); a house Grant had previously owned (Grant's House); a two-unit duplex (Duplex 1); and a four-unit duplex (Duplex 2). Pursuant to the 2010 Trust, all of Wayne's children (the Beneficiaries), except one who had been expressly disinherited, were to receive a \$500 distribution; Grant was to receive the Empty Lot; and the remainder of the assets were to be distributed among the Beneficiaries at Grant's sole discretion.

¶6 In 2012, Wayne amended the 2010 Trust, directing that after his death, Grant's House, the Empty Lot, and Wayne's House should be distributed "outright and immediately" to Grant (the 2012 Amendment).

¶7 In 2013, Grant purchased Duplex 2 from the 2010 Trust by executing a promissory note in favor of the 2010 Trust for the assessed value of the duplex (the 2013 Transaction). The note included a loan forgiveness provision effective upon Wayne's death. Grant recorded a warranty deed and a trust deed on Duplex 2, but neither document detailed his specific re-payment obligations or the forgiveness provision contained in the note, nor were these facts disclosed to Grant's siblings at the time of the purchase, though Grant did later disclose the fact of the 2013 Transaction to Appellants.

¶8 After Wayne died in the spring of 2018, his estate planning attorney notified Wayne's children via letter of the 2010 Trust and the 2012 Amendment. On September 5, 2018, Dale filed a petition seeking to invalidate the 2010 Trust and 2012 Amendment and remove Grant as trustee (the First Litigation).

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¶9 Dale's petition in the First Litigation challenged the validity of the 2010 Trust and the 2012 Amendment. It alleged that the 2012 Amendment, under which Grant would receive ninety-five percent of Wayne's entire estate, "was a result of Grant's continued undue influence" on Wayne. It further alleged that "Grant ha[d] failed to act according to his duties imposed by the [2010] Trust and by Utah law" by failing to "provide adequate disclosures and information to the beneficiaries" and "consistently [using 2010] Trust funds to pay for personal expenses, including but not limited to, expenses for real property owned by himself personally."

¶10 Grant filed a motion for summary judgment in the First Litigation in December 2018, arguing no dispute of fact existed and the facts proved that he had exercised no undue influence over Wayne with respect to the creation of the 2010 Trust or the 2012 Amendment. He further alleged the material facts proved that the 2012 Amendment did not substantively change the provisions of the 2010 Trust, which had already given him, as trustee, sole discretion to distribute trust assets.

¶11 On January 31, 2019, while the motion for summary judgment was pending, Grant sent the Beneficiaries a letter containing an inventory of the 2010 Trust assets (the January 2019 Letter). The listed assets did not include either Duplex 2 or the promissory note that Grant had executed in favor of the 2010 Trust in connection with the 2013 Transaction. Despite being on notice that the trust assets did not include Duplex 2 or the promissory note, Dale did not raise this fact, or provide any evidence supporting his petition, in opposing Grant's motion for summary judgment. Nor did Dale file an affidavit or declaration pursuant to rule 56(d) of the Utah Rules of Civil Procedure requesting that the court defer its consideration of the motion in order to allow him to obtain affidavits or conduct discovery to find out more information to respond to Grant's motion. In short, Dale functionally failed to defend against the motion.

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¶12 On April 8, 2019, the court in the First Litigation entered summary judgment in favor of Grant and dismissed the petition. It ruled that the 2010 Trust and the 2012 Amendment were valid, and that Grant had not violated any fiduciary duty to the Beneficiaries.

¶13 Upon receiving the court's ruling, Dale retained new counsel and filed a motion to set aside the summary judgment, arguing that prior counsel had been negligent in failing to offer evidence opposing the motion. In that motion, Dale provided additional details to support the broad allegations of his petition. He argued that Wayne had been in ill health and declining mentally at the time of the transactions in question, and he also alleged that Grant had "effectively transferred a parcel worth more than \$400,000.00 to himself." He also asserted that the 2010 Trust "purportedly sold the parcel containing [Duplex 1 and Duplex 2] to Grant, with the 2010 Trust lending Grant \$418,900.00 for the purchase, which debt appears to have been forgiven by Grant following [Wayne's] death."

¶14 But the court in the First Litigation was unpersuaded that these additional facts created a genuine dispute of material fact. On September 20, 2019, the court denied Dale's motion to set aside the judgment, reasoning the newly presented evidence was insufficient to create an issue of fact regarding any alleged wrongdoing on Grant's part.

¶15 Three days later, Dale, along with Clifford and Edward, filed a new petition seeking to remove Grant as trustee or, in the alternative, for an injunction restraining Grant's discretion (the Second Litigation). Like the petition in the First Litigation, the petition alleged that Grant had breached his fiduciary duties to the Beneficiaries. It traced the history of the 2010 Trust, the 2012 Amendment, and the 2013 Transaction. It alleged Grant had used trust assets to pay the property taxes on Duplex 2 and noted that the January 2019 Letter listing the assets of the estate

included no mention of Grant's promissory note for the purchase of Duplex 2. It concluded that "Grant's failure to include the promissory note among the assets of the [2010] Trust indicate[d] his intent to use his discretion as trustee to forgive the promissory note," thereby increasing his distribution of trust assets at the expense of the other Beneficiaries.

¶16 Grant again moved for summary judgment, asserting the claims in the Second Litigation were barred by both the claim preclusion and issue preclusion branches of *res judicata*. As to claim preclusion, Grant argued the First and Second Litigations both involved the same parties and the same claims, and the First Litigation had resulted in a final judgment on the merits.

¶17 The district court granted the motion for summary judgment, concluding that because all the elements of claim preclusion had been met, Appellants were barred from bringing the Second Litigation. Specifically, the court found that both suits involved the same party or privies, that the claims in the Second Litigation were in fact raised or could have been raised in the First Litigation, and that the First Litigation resulted in a final judgment on the merits.

#### ISSUE AND STANDARD OF REVIEW

¶18 Appellants argue the district court erred in determining that the claim preclusion branch of *res judicata* barred the Second Litigation.<sup>3</sup> "Whether a claim is barred by *res judicata* is a question of law that we review for correctness." *Gillmor v. Family Link, LLC*, 2012 UT 38, ¶ 9, 284 P.3d 622.

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3. Appellants also argue the Second Litigation is not barred by issue preclusion. Because we conclude claim preclusion bars the Second Litigation, we do not reach this argument.

ANALYSIS

¶19 Res judicata is a judicially created doctrine that serves to prevent parties from relitigating in a subsequent action issues and claims that have already been decided on the merits. The doctrine comprises two branches, claim preclusion and issue preclusion. *Gillmor v. Family Link, LLC*, 2012 UT 38, ¶ 10 n.4, 284 P.3d 622; see also *Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne*, 2012 UT 66, ¶ 12, 289 P.3d 502. At issue here is whether Appellants' claims in the Second Litigation were properly barred by the claim preclusion branch of res judicata.

¶20 In determining whether claim preclusion applies, our supreme court has adopted a three-part test:

First, both cases must involve the same parties or their privies. Second, the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action. Third, the first suit must have resulted in a final judgment on the merits.

*Gillmor*, 2012 UT 38, ¶ 10 (quotation simplified). "If these three requirements are met, the result in the prior action constitutes the full relief available to the parties on the same claim or cause of action." *American Estate Mgmt. Corp. v. International Inv. & Dev. Corp.*, 1999 UT App 232, ¶ 6, 986 P.2d 765 (quotation simplified).

¶21 Here, Appellants concede the first and third prongs have been met; they contest only the district court's determination pertaining to the second prong, "that the Second Claims actually were, or could have been, brought in the First Litigation."

¶22 Appellants argue the district court erred in determining the claims raised in the Second Litigation were brought, or could have been brought, in the First Litigation. They posit the claims raised in the Second Litigation were based on three sets of facts

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of which they were unaware until after the First Litigation was resolved: (1) the specific terms of the 2013 Transaction, (2) Grant's use of trust assets to pay property taxes on Duplex 2, and (3) the January 2019 Letter in which Grant provided an accounting of trust assets that omitted reference to Duplex 2 and any debt associated with the 2013 Transaction. Appellants argue that the First Litigation focused on the validity of the 2010 Trust and the 2012 Amendment based on undue influence from Grant. In contrast, Appellants claim that the Second Litigation focused on the 2013 Transaction and whether Wayne possessed the capacity to sell trust property and whether Grant's distribution of trust assets violated his fiduciary duty to the Beneficiaries.

¶23 When evaluating whether a claim has been brought before for purposes of res judicata, our supreme court has adopted a "transactional test." *Gillmor*, 2012 UT 38, ¶ 13. "Under this formulation, rather than resting on the specific legal theory invoked, claim preclusion generally is thought to turn on the essential similarity of the underlying events giving rise to the various legal claims." *Id.* (quotation simplified). "Claims or causes of action are the same as those brought or that could have been brought in the first action if they arise from the same operative facts, or in other words from the same transaction." *Mack v. Utah State Dep't of Com.*, 2009 UT 47, ¶ 30, 221 P.3d 194.

¶24 Here, the district court correctly found the claims in the Second Litigation were "identical to" and relied on the "same transactions" alleged in the First Litigation. Both the First and Second Litigations "involved the validity of the [2010] Trust Agreement, transfers related to the [2010] Trust Agreement, and Grant Ingledew's sole discretion as the Trustee to carry out the transfers and make payments—including transfers to himself and payments made on his behalf." The First Litigation "also raised the validity of the transfer of [Duplex 2] and the payment of property and other taxes by the [2010] Trust."

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¶25 Moreover, the specific facts on which Appellants relied in framing their claims in the Second Litigation were explicitly raised in their motion to set aside the summary judgment in the First Litigation. In urging the court to set aside the summary judgment, Dale submitted declarations establishing the terms of the 2013 Transaction that removed Duplex 2 from the 2010 Trust’s distributable assets. In essence, he argued that Grant improperly influenced Wayne to effectively transfer a parcel worth more than \$400,000 to himself.

¶26 The district court in the First Litigation considered Dale’s claims and the facts established by the declarations he had submitted, but it concluded they “were not sufficient to create an issue of fact that would have allowed [Dale] to survive the initial motion for summary judgment.” Because those same operative facts were the basis for the Appellants’ petition in the Second Litigation, the court in the Second Litigation correctly concluded Grant had established that the claims raised in the Second Litigation had been presented in the First Litigation. Having correctly determined that Grant had satisfied “all three elements of claim preclusion,” the court properly dismissed the petition.

CONCLUSION

¶27 The district court properly concluded Appellants’ claims in the Second Litigation were barred by the claim preclusion branch of res judicata. We therefore affirm.

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