

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Kathy Schmidt,)	
)	Supreme Court No. 20220219
Plaintiff and Appellant,)	
)	Pierce County No. 35-2021-CV-00047
-vs-)	
)	
Margaret Hageness, Patrick Hageness,)	
Patricia Slaubaugh, Bonnie Strand,)	
Lutheran Social Services (LSS), Guardian)	
of S.M.H., Elaine Hornaday,)	
Scott Landa Lutheran Social Services,)	
Eryn Jager Lutheran Social Services,)	
Diane Osland Lutheran Social Services,)	
and any and unknown parties,)	
)	
Defendants and Appellees.)	

APPEAL FROM THE JUDGMENT DATED MAY 26, 2022, PURSUANT TO THE ORDER FOR JUDGMENT DATED MAY 26, 2022, IN ACCORDANCE WITH THE ORDER TO DISMISS DATED MAY 20, 2022, ON THE BASIS OF LACK OF STANDING AND RES JUDICATA; PIERCE COUNTY DISTRICT COURT, NORTHWEST JUDICIAL DISTRICT; THE HONORABLE ANTHONY SWAIN BENSON PRESIDING

BRIEF OF APPELLEE, SCOTT LANDA

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STATEMENT OF THE ISSUES

[1] Whether the District Court erred in granting Defendants' *Motions to Dismiss*.

STATEMENT OF THE CASE

[2] This matter arises out of the desire of Plaintiff Kathy Schmidt ("Schmidt") to quiet title on certain real property located in Pierce County¹, North Dakota and listed on a certain warranty deed (hereinafter, "the *Warranty Deed*") recorded with the Pierce County Recorder as document number 199345. Schmidt filed the *Warranty Deed* as an exhibit to her *Complaint* in district court. (*See Warranty Deed*, Index # 2).

[3] On January 19, 2022, Defendant Scott Landa ("Landa") filed a *Motion to Dismiss* Schmidt's *Complaint*, under 12(b)(6), N.D. R. Civ. P. (*See* Index # 75). After review of full briefing on the motions, on May 20, 2022, Judge Benson granted Defendants' motion and dismissed the action with prejudice, based on lack of standing and res judicata. (*See Order for Dismissal*, Index # 120).

STATEMENT OF THE FACTS

[4] Schmidt asserts she has an ownership interest in certain real property by way of the *Warranty Deed*. The *Warranty Deed* has been the subject of extensive litigation, and North Dakota's courts have previously concluded the *Warranty Deed* is invalid. Specifically, on July 10, 2020, in Benson County, North Dakota Case No. 03-2018-PR-00023, *In the Matter of the Guardianship and Conservatorship of S.M.H., An Incapacitated Person*, the district court provided the following well-reasoned findings as to the *Warranty Deed*:

¹ Schmidt also filed nearly identical quiet title lawsuits in McKenzie County (Case No. 27-2021-CV-00251) and Benson County (Case No. 03-2021-DV-00034). The district courts in both the McKenzie County and Benson County actions have granted the Defendants' *Motions to Dismiss* and have entered judgments in Defendants' favor, dismissing each action with prejudice.

The Court finds that the document purporting to be a deed which recorded by Kathy Schmidt on May 4, 2020 . . . fails to meet the statutory requirements required for a valid and proper conveyance of [S.M.H.'s] interest in and to the various properties as required by NDCC § 47-10-01 and NDCC § 47-10-05. Specifically, the Court finds that the document lacks a signature by [S.M.H.] disposing of her interest in the properties outlined within the document. Additionally, the Court finds that neither the handwritten document nor the typed document is properly witnessed. **The document fails, in all respects, to validly convey an interest to Kathy.**

(July 10, 2020 *Order* in Case No. 03-2018-PR-00023) (emphasis added).

[5] Arguing the district court erred in determining the *Warranty Deed* failed to meet the statutory requirements of a valid conveyance, Schmidt appealed the district court's decision to the North Dakota Supreme Court. On June 3, 2021, this Court affirmed the district court's decision. In pertinent part, the Supreme Court opinion provides as follows:

We conclude the document fails to meet the statutory requirements under N.D.C.C. § 47-10-01 necessary to convey S.M.H.'s interest in the real property Having concluded the document lacked the required signature of S.M.H., it is unnecessary to reach the issue of whether the document was properly witnessed under N.D.C.C. § 47-10-05. **We affirm the court's finding of fact that the document lacked S.M.H.'s signature and the subsequent conclusion of law the document was not a valid conveyance of S.M.H.'s interest in the real property.**

(*In the Matter of the Guardianship and Conservatorship of S.M.H., an incapacitated person*, 2021 ND 104, ¶ 23, 960 N.W.2d 811) (emphasis added).

[6] Unhappy with the findings and conclusions in the above referenced matter, Schmidt filed quiet title actions in Benson County, McKenzie County, and Pierce County asserting an ownership interest in real property. Schmidt's asserted ownership interest in the property is claimed exclusively from the *Warranty Deed*.

[7] In the Benson County action, the lower court dismissed Schmidt's *Complaint* in its entirety due to Schmidt's lack of standing based on Schmidt's lack of interest in the property, according to *res judicata*. The court reasoned as follows:

The opinion in Matter of Guardianship of S.M.H. clearly shows res judicata bars the present action by Schmidt. An identical issue was raised and argued extensively. There was clearly a prior finding of fact, upheld on appeal, that the Warranty Deed lacked SMH's signature. There was clearly a prior conclusion of law, upheld on appeal, holding the Warranty Deed was not a valid conveyance of SMH's interest in the Subject Property. This Court could not rule in the present action in favor of Schmidt without issuing a finding of fact and conclusion of law directly contradicting the district court's and the North Dakota Supreme Court's prior finding of fact and conclusion of law. This "relitigating" is not allowable, even if Schmidt's current action were based on a different legal theory. The case, must, as a matter of law, be dismissed.

(Case No. 03-2021-CV-00034, Index # 84, ¶ 12).

[8] After the district court dismissed Schmidt's *Complaint*, Schmidt filed her *Motion for Reconsideration*, "requesting a reconsideration of [the *Motion to Dismiss*] decision and a hearing with oral argument . . . with all the new evidence that has never been litigated." (*Id.*, Index # 86 at p.1). The district court denied Schmidt's *Motion for Reconsideration*, explaining that "[t]he Court does not have newly discovered evidence to examine for purpose of the motion for reconsideration." (*Id.*, Index # 95). Schmidt then filed a second *Motion for Reconsideration* requesting oral argument. The district court dismissed the second *Motion for Reconsideration* on its own motion. (*Id.*, Index # 116 at p.2).

[9] Schmidt appealed to this Court the district court's decisions granting Defendants' *Motions to Dismiss* and denying Plaintiff's *Motion for Reconsideration* and second *Motion for Reconsideration*. (See Supreme Court No. 20220109). On appeal, Schmidt argued the district court improperly (a) dismissed the action pursuant to res judicata; (b) denied Schmidt's requests for oral argument and discovery; and (c) failed to consider "new evidence" submitted by Schmidt in Schmidt's two requests for reconsideration. (See *Appellant Brief*, pp. 2-4, Numbers 1-12). Appellee, Landa, maintained (a) Schmidt did not have standing to bring suit based on Schmidt's lack of interest in the property,

according to res judicata; (b) Schmidt expressly waived oral argument on the *Motions to Dismiss*; and (c) Schmidt failed to provide “newly discovered evidence” or present any extraordinary circumstance entitling her to relief on her *Motion for Reconsideration* and second *Motion for Reconsideration*. This matter is still pending before this Court.

[10] In the McKenzie County action, the lower court dismissed Schmidt’s *Complaint* in its entirety due to Schmidt’s lack of standing based on Schmidt’s lack of interest in the property, according to res judicata. The court reasoned as follows:

The opinion in Matter of Guardianship of S.M.H. clearly demonstrates res judicata bars the present action. An identical issue was raised and argued extensively. It is undisputed a prior findings of fact determined the Warranty Deed lacked SMH’s signature. It is undisputed a prior conclusion of law held the Warranty Deed was not a valid conveyance of SMH’s interest in the Subject Property. These findings and conclusions were affirmed on appeal.

This Court could not rule in the present action in favor of Schmidt without issuing a finding of fact and conclusion of law directly contradicting the district court’s and the North Dakota Supreme Court’s prior decisions. This “relitigation” is not allowable, even if Schmidt’s current action were based upon a different legal theory. The case must, as a matter of law, be dismissed.

(Case No.: 27-2021-CV-00251, Index # 101, ¶¶ 11-12).

[11] Schmidt appealed to this Court the district court’s decisions granting Defendants’ *Motions to Dismiss*. (See Supreme Court No. 20220138). On appeal, Schmidt argued the district court improperly dismissed the action pursuant to res judicata and denied Schmidt’s requests for oral argument and discovery. (See *Appellant Brief*, p. 4, Numbers 1-4). Appellee, Landa, maintained Schmidt dis not have standing to bring suit based on Schmidt’s lack of interest in the property, according to res judicata. This matter is still pending before this Court.

[12] In the case at bar, the lower court dismissed Schmidt's Complaint in its entirety due to Schmidt's lack of standing and res judicata. The court reasoned as follows:

Res judicata bars this action by Schmidt as the issue at hand was decided in the 03 2018-PR-00023 case, and that ruling was upheld by the North Dakota Supreme Court after an appeal by Schmidt. The Court made it quite clear in its opinion that the "Warranty Deed" that Schmidt relies upon is in not valid. "We conclude the document fails to meet the statutory requirements under N.D.C.C. § 47-10-01 necessary to convey S.M.H.'s interest in the real property or create an enforceable right of first refusal by K.S ... We affirm the court's finding of fact the document lacked S.M.H.'s signature and the subsequent conclusion of law the document was not a valid conveyance of S.M.H.'s interest in the real property." In the Matter of the Guardianship of S.M.H., 2021 ND 104, ¶ 23. This Court will not issue a finding regarding the purported warranty deed that would be in contradiction to that of the district court's finding in case 03-2018-PR-00023, which finding was affirmed by the North Dakota Supreme Court.

Because the document upon which Schmidt relies to establish her interest in the property is not valid, Schmidt does not have the requisite standing to bring this action, and res judicata and claim preclusion prevent this action from proceeding. The Motions to Dismiss brought by Lutheran Social Services and Scott Landa are granted, and this matter is dismissed with prejudice.

(Index # 120, ¶¶ 7,8)

[13] Schmidt now appeals the district court's decisions granting Defendants' *Motions to Dismiss*. On appeal, Schmidt seems to argue the district court improperly dismissed the action pursuant to res judicata and denied Schmidt's requests for oral argument and discovery. (*See Appellant Brief*, p. 4, Numbers 1-4). Appellee, Landa, continues to maintain Schmidt does not have standing to bring suit based on Schmidt's lack of interest in the property, according to res judicata, and as such, the Court should affirm the district court's well-reasoned decision.

LAW AND ARGUMENT

I. Scope of Review on Appeal.

[14] The standard of review of a judgment dismissing a complaint under N.D.R.Civ.P. 12(b)(6) for failure to state a claim is well established:

A motion to dismiss a complaint under N.D.R.Civ. P. 12(b)(vi) tests the legal sufficiency of the claim presented in the complaint. On appeal from a dismissal under N.D.R.Civ. P. 12(b)(vi), we construe the complaint in the light most favorable to the plaintiff and accept as true the well-pleaded allegations in the complaint. Under N.D.R.Civ. P. 12(b)(vi), a complaint should not be dismissed unless it is disclosed with certainty the impossibility of proving a claim upon which relief can be granted. We will affirm a judgment dismissing a complaint for failure to state a claim if we cannot discern a potential for proof to support it. We review the district court's decision granting judgment on the pleadings under N.D.R.Civ.P. 12(b)(6) de novo.

Brandvold v. Lewis & Clark Pub. Sch. Dist. No. 161, 2011 ND 185, ¶ 6, 803 N.W.2d 827 (internal quotations and citations omitted).

II. The District Court Correctly Concluded Schmidt Does Not Have Standing.

[15] The district court concluded, “[b]ecause the document upon which Schmidt relies to establish her interest in the property is not valid, Schmidt does not have the requisite standing to bring this action, and res judicata and claim preclusion prevent this action from proceeding.” (Index # 120, ¶ 8). The district court’s conclusion is correct.

A. Quiet Title Standing Requirements.

[16] Chapter 32-17 of the North Dakota Century Code governs actions to quiet title and determine claims to real estate. Section 32-17-01 details the requirements necessary to maintain a quiet title action. The section provides as follows:

An action may be maintained by any person having an estate or an interest in, or lien or encumbrance upon, real property, whether in or out of possession thereof and whether such property is vacant or unoccupied, against any person claiming an estate or interest in, or lien or encumbrance

upon, the same, for the purpose of determining such adverse estate, interest, lien, or encumbrance.

(N.D.C.C. § 32-17-01). Accordingly, in order to maintain a quiet title action, a person must have an interest in the property.

B. Schmidt Has No Interest in the Subject Property.

[17] “A party is entitled to have a court decide the merits of a dispute only after demonstrating the party has standing to litigate the issues placed before the court. Standing is the concept used to determine if a party is sufficiently affected so as to ensure that a justiciable controversy is presented to the court.” *Finstad v. Gord*, 2014 ND 72, ¶ 13, 844 N.W.2d 913 (internal citations and quotations omitted). “In an action to quiet title to realty, the plaintiff must rely upon the strength of his own title and not upon the weakness of that of his adversary.” *Id.* at ¶ 24 (citing *Woodland v. Woodland*, 147 N.W.2d 590, 602 (N.D. 1966)). After citing to N.D.C.C. § 32-17-01 and explaining the requirements for standing in a quiet title action, the *Finstad* Court concluded, “the Finstads do not have any interest in the property and therefore do not have standing[.]” *Id.*

[18] Schmidt’s asserted interest in the subject property is derived exclusively from the *Warranty Deed*. In *In the Matter of the Guardianship and Conservatorship of S.M.H, an incapacitated person*, the North Dakota Supreme Court concluded the *Warranty Deed* was invalid and did not convey any interest in the property to Schmidt. See paragraph 6, *supra*.

[19] Therefore, Schmidt has no interest in the property. Because Schmidt does not have an interest in the property, like the Finstads in *Finstad v. Gord*, Schmidt does not have standing to bring this quiet title action.

III. The District Court Correctly Concluded the Action is Barred by Res Judicata.

[20] On appeal, like at the district court level, Schmidt asserts this action is not barred by res judicata. *See, e.g., Appellant's Brief*, p. 4, Number 3 (“Did the Lower Court err as a matter of law by concluding that the action was barred by res judicata and dismissing the case. I have never had a hearing on the land in this quiet title action.”); *Id.*, p. 35 (“The lower court erred by stating that this action was barred by res judicata since I have never been in a quiet title action with this property.”). Schmidt seems to believe that because the courts previously entertained the subject deed in a **guardianship action**, Schmidt is not precluded from relitigating the validity of the subject deed in this **quiet title action**.

[21] Schmidt’s assertion is misguided as res judicata applies to bar relitigating the validity of the *Warranty Deed*. The deed at issue in this case is the same deed that was examined in *In the Matter of the Guardianship and Conservatorship of S.M.H., An Incapacitated Person*. In that case, the district court determined, and the North Dakota Supreme Court affirmed, that the subject deed is invalid and did not convey any interest to Schmidt. (*See* ¶¶ 5-6, *supra*). Res judicata applies even if subsequent claims are based upon different legal theories. *See Ungar v. North Dakota State Univ.*, 2006 ND 185, ¶ 10, 721 N.W.2d 16 (“Res judicata, or claim preclusion, prevents relitigation of claims that were raised, or could have been raised, in prior action between the same parties or their privies Res judicata applies even if subsequent claims are based upon a different legal theory.”) Therefore, res judicata applies here and consequently bars Schmidt’s claim.

IV. The District Court Correctly Dismissed This Action Without Oral Argument or Evidentiary Hearing.

[22] Schmidt asserts throughout her *Appellant's Brief* that the district court denied her multiple demands for oral argument and an evidentiary hearing. *See, e.g., Appellant's Brief*,

p.4, Number 4 (“The Order/Judgment improperly denied my rights to have a hearing in the matter of this Quiet title action and due process. New evidence was submitted and had never had a hearing, or testimony, or litigation, review, and cross examination and discovery.”); *Id.*, p. 6 (“New evidence has been presented to this case and it should not be dismissed. I want to have my rights to due process.”); *Id.*, p. 34 (“The lower court ignored new evidence that had been provided during the request for hearing and reconsideration. The lower court erred by denying me the right to discovery and or rulings on discovery, interrogatories, testimony, and denied my demands for oral argument and discovery.”).

[23] Schmidt’s assertions are misguided, as oral argument and an evidentiary hearing on the validity of the *Warranty Deed* (Index # 5) and the *Power of Attorney* (Index # 2) would not have changed the outcome of the matter, as *res judicata* prohibits re-addressing these issues. “Res judicata, or claim preclusion, **prevents relitigation of claims that were raised, or could have been raised, in prior action between the same parties or their privies . . . Res judicata applies even if subsequent claims are based upon a different legal theory.**” *Ungar v. North Dakota State Univ.*, 2006 ND 185, ¶ 11, 721 N.W.2d 16.

[24] With respect to the validity of the *Warranty Deed*, this issue was previously raised and properly before the court in Benson County, North Dakota Case No. 03-2018-PR-00023, *In the Matter of the Guardianship and Conservatorship of S.M.H., An Incapacitated Person*. Moreover, and despite Schmidt’s contentions otherwise, Schmidt did not request an evidentiary hearing on the validity issue. In fact, this Court provided a detailed analysis and conclusions regarding Schmidt’s arguments:

K.S. argues the court erred because the issue concerning the document’s validity had not properly been placed before the court, and the court erred by failing to hold an evidentiary hearing regarding the validity of the document.

In its motion seeking the district court’s approval of the sale of S.M.H.’s interest in real property, Lutheran Social Services attached as an exhibit to an affidavit the “Warranty Deed” document and argued that the document did not prevent the sale. K.S. opposed the motion arguing the sale did not conform to the terms of the document. Upon filing her brief in opposition to the motion, K.S. did not request an evidentiary hearing.

The validity of the “Warranty Deed” document was raised within Lutheran Social Services’ motion when Lutheran Social Services asserted the document did not prevent the sale. K.S. responded by asserting the terms of the warranty deed were being ignored. **We conclude the validity of the document had been placed at issue and was properly before the district court for resolution.**

...

Our rules of court, N.D.R.Ct. 3.2, placed the burden of requesting an evidentiary hearing on the parties. **K.S. did not request an evidentiary hearing. We conclude the district court did not err by making a determination on whether the document was a valid conveyance without holding an evidentiary hearing.**

In the Matter of the Guardianship and Conservatorship of S.M.H., An Incapacitated Person, 2021 ND 104, ¶¶ 13-15, 17, 960 N.W.2d 811) (emphasis added). Because the validity of the *Warranty Deed* was previously raised in the guardianship proceeding, res judicata prevents relitigation of the same issue here.

[25] With respect to the *Power of Attorney* issue, Schmidt could have raised the issue in the guardianship case. This Court has already provided a well-reasoned analysis.

K.S. argues the district court’s finding that the [Warranty Deed] lacked S.M.H.’s signature was erroneous based on her purported designation as S.M.H.’s power of attorney which granted her authority to sign on behalf of S.M.H. **However, K.S. failed to make this argument in her principal briefings to the court.** The power of attorney exhibit was attached to K.S.’s objection to the proposed order. The power of attorney exhibit was not provided to the court or to Lutheran Social Services during the briefing on the motion to approve the sale of the real property, was not subject to cross-examination, and was not properly placed before the court as evidence.

...

The proper procedure would have been to request an evidentiary hearing. As provided in Section III above, K.S. did not make a request for an evidentiary hearing to introduce additional evidence.

In the Matter of the Guardianship and Conservatorship of S.M.H., An Incapacitated Person, 2021 ND 104, ¶¶ 21-22, 960 N.W.2d 811) (emphasis added). Again, “[r]es judicata, or claim preclusion, prevents relitigation of claims that were raised, **or could have been raised**, in prior action between the same parties or their privies.” *Ungar v. North Dakota State Univ.*, 2006 ND 185, ¶ 11, 721 N.W.2d 16. Because the power of attorney issue could have been raised in the guardianship action, res judicata prevents litigation of the issue in this quiet title action.

[26] Oral argument and an evidentiary hearing on the validity of the *Warranty Deed* and the *Power of Attorney* would not have changed the outcome of the matter, as res judicata prohibited the district court from addressing these issues. Therefore, the Court properly dismissed this action on the briefs and without holding oral argument or an evidentiary hearing.

V. Schmidt is a Vexatious Litigant.

[27] A person is a vexatious litigant when “after a litigation has been finally determined against the person, the person has repeatedly relitigated or attempted to relitigate, as a self-represented party . . . the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.” Rule 58(4)(b)(2) N.D. Sup. Ct. Admin. R. “The supreme court may, on the court’s own motion or the motion of any party to an appeal, enter a pre-filing order prohibiting a vexatious litigant from filing any new litigation in the courts of this state as a self-represented party without first obtaining

leave of a judge of the court where the litigation is proposed to be filed.” Rule 58(7) N.D. Sup. Ct. Admin. R.

[28] Schmidt, as a self-represented party, has repeatedly relitigated or attempted to relitigate the validity of the *Warranty Deed* and her asserted interests derived from the *Warranty Deed*. Schmidt first litigated the validity of the *Warranty Deed* in the *Matter of Guardianship of S.M.H* (Case No. 03-2018-PR-00023), which Schmidt appealed to this Court. Schmidt has subsequently attempted to relitigate the validity of the *Warranty Deed* in separate quiet title actions in McKenzie County (Case No. 27-2021-CV-00251), Benson County (Case No. 03-2021-CV-00034), and Pierce County (Case No. 35-2021-CV-00047). As such, the Court should deem Schmidt a vexatious litigant under Rule 58.

CONCLUSION

[29] For the foregoing reasons, Landa respectfully requests the Court affirm the district court’s well-reasoned decisions in all respects.

Dated this 10th day of October, 2022.

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CERTIFICATE OF COMPLIANCE

The undersigned certifies the above brief is in compliance with N.D.R. App. P. 32(a)(8)(A) and the total number of pages in the brief, excluding this Certificate of Compliance and the Certificate of Service totals 15 pages.

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2022 a true and correct copy of the foregoing Brief of Appellee Scott Landa was served on the following individual via email:

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IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Kathy Schmidt, pro se, Record Title Owner)
)
Plaintiff and Appellant,)
)
v.)
)
Margaret Hageness, Patrick Hageness,)
Patricia Slaubaugh, Bonnie Strand, Lutheran)
Social Services (LSS), guardian of Shirley)
M. Hageness; Elaine Hornaday; Scott Landa)
Lutheran Social Services; Eryn Jager,)
Lutheran Social Service; Diane Osland,)
Lutheran Social Services; and any unknown)
parties,)
)
Defendants and Appellees.)

Supreme Court No. 20220219
Pierce County Case No. 35-2021-CV-00047

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
) ss.
COUNTY OF BURLEIGH)

The undersigned, being duly sworn and of legal age, deposes and says that: I am a United States citizen, over 18 years of age; and that on October 11, 2022, I served a copy of the **Brief of Appellee Scott Landa** on the following by email:

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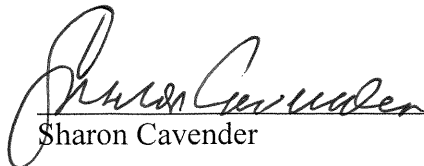
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Sharon Cavender

Subscribed and sworn to before me this 11th day of October, 2022.

BETTY H MERTZ
Notary Public
State of North Dakota
My Commission Expires November 7, 2024


NOTARY PUBLIC