

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Kathy Schmidt, Plaintiff and Appellant,
v.
Margaret Hageness, Patrick Hageness;
Patricia Slaubaugh, Bonnie Strand, Lutheran
Social Services, Guardian of S.M.H., Elaine
Hornaday, Scott Landa Lutheran Social
Services, Eryn Jager Lutheran Social
Services, Diane Osland Lutheran Social
Services and any unknown parties,
Defendants and Appellees.

Supreme Court No. 20220219

Pierce Co. No. 35-2021-CV-00047

BRIEF OF APPELLEES

APPEAL OF ORDER FOR JUDGMENT (R124) AND JUDGMENT (R125)

DATED MAY 26, 2022

THE DISTRICT COURT OF PIERCE COUNTY, NORTH DAKOTA

NORTHEAST JUDICIAL DISTRICT

THE HONORABLE ANTHONY SWAIN BENSON, PRESIDING

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STATEMENT OF ISSUES

ISSUE A: Whether the district court properly determined that Schmidt lacked standing to maintain this quiet title action.

ISSUE B: Whether the district court afforded Schmidt the process she was due.

STATEMENT OF THE CASE

I. Nature of the case and course of proceedings

¶1 This is an appeal by Kathy Schmidt from an *Order for Judgment* (R124) which was filed on May 26, 2022 in district court, Pierce County, North Dakota and from a *Judgment of Dismissal* (R125) which was filed on the same date in the same Court.

¶2 This is a quiet title proceeding initiated by Kathy Schmidt seeking to quiet title in certain real estate located in Pierce County, North Dakota. (R1). Defendants, Lutheran Social Services (as Guardian for S.M.H.) and Eryn Jager and Diane Osland, interposed an *Answer* to Plaintiff's Complaint on August 2, 2021. (R34). These Defendants subsequently filed a *Rule 12(b)(6) Motion to Dismiss* on January 19, 2022. (R82). The motion to dismiss was granted by the district court on May 20, 2022 in its *Order for Dismissal*. (R120). On May 26, 2022, the district court entered its *Order for Judgment* (R124) and its *Judgment of Dismissal* (R125). On July 24, 2022, Kathy Schmidt filed a *Notice of Appeal*. (R129).

II. Facts

¶3 This quiet title action involves certain real property located in Pierce County, North Dakota. (R1). The real property that is the subject of this action is described in a document entitled "Warranty Deed" which is attached to the Complaint as an exhibit and which has been filed in this matter as R2. This Court is quite familiar with the "Warranty Deed" having conducted a thorough legal analysis of the document in *In the Matter of the Guardianship and Conservatorship of S.M.H.* 2021 ND 104, 960 N.W.2d 811.

¶4 The nature and history of the "Warranty Deed" was described by this Court in *S.M.H.* In October 2019, Lutheran Social Services filed with the district court a petition to sell the ward's interest in various parcels of real property to meet expenses incurred for her

care at an assisted living facility. *Id.* at ¶3. The district court granted Lutheran Social Services' petition, provided that the ward's family members were given notice of sale and the first option to purchase the property at appraised value. *Id.*

¶5 On May 13, 2020, Schmidt, an adult child of the ward, filed an affidavit with the district court. *Id.* at ¶3. Attached as an exhibit to the affidavit was a typewritten document entitled "Warranty Deed". *Id.* The document purportedly conveyed ninety percent of the ward's interest in all her real property to Schmidt and purported to grant Schmidt a right of first refusal. *Id.* Incorporated into the document was a separate hand-written document that purported to convey to Schmidt a portion of the ward's one-third interest in undescribed real property in Pierce County, North Dakota. *Id.*

¶6 On June 3, 2020, after receiving purchase offers and inquiring with Schmidt whether she sought to enter into a purchase agreement under the same terms as the other offers, Lutheran Social Services filed a motion to approve of the sale of the ward's interest in the real property. *Id.* at ¶4. In its motion, Lutheran Social Services argued the "Warranty Deed" document was not a valid conveyance and did not prevent the sale of the ward's interest in the real property. *Id.* Schmidt opposed the motion. *Id.* After both parties had filed their briefs on the motion, Lutheran Social Services filed a proposed order. *Id.* at ¶5. Schmidt filed an objection to the proposed order. *Id.*

¶7 On July 13, 2020, the district court entered an order approving the sale of the ward's interest in any real property owned by the ward. *Id.* at ¶6. The district court found the "Warranty Deed" document lacked the signature of the ward and was not properly witnessed. *Id.* The court concluded the document failed to meet the statutory requirements

necessary to convey the ward's interest in the described properties to Schmidt or grant Schmidt a right of first refusal. *Id.*

¶8 In *S.M.H.*, Schmidt appealed the district court's determination that the "Warranty Deed" failed to validly convey an interest to her. This Court issued its decision on June 3, 2021 affirming the district court in all respects and holding that the "Warranty Deed" failed to convey S.M.H.'s interest in the property to Schmidt. *In the Matter of the Guardianship and Conservatorship of S.M.H.* 2021 ND 104. More specifically, this Court held, among other things, that: (1) the validity of the "Warranty Deed" document had been placed at issue and was properly before the district court for resolution (¶15); (2) Schmidt was not denied any process due her under the Rules of Court or Rules of Evidence (¶17), and; (3) the "Warranty Deed" document failed to meet the statutory requirements of N.D.C.C. §47-10-01 (¶31).

¶9 Subsequent to this Court's affirmation that the "Warranty Deed" failed to convey the ward's interest in the property to Schmidt, Schmidt filed separate quiet title actions in Pierce County (the instant matter), Benson County (Case No. 03-2021-CV-00034) and McKenzie County (Case No. 27-2021-CV-00251), North Dakota. In each of these counties, Schmidt again asserted that she received title to property via the same "Warranty Deed" which had previously been ruled invalid by the district court in the guardianship proceeding and by the North Dakota Supreme Court.

¶10 On May 20, 2022, the district court in the instant matter granted the motions to dismiss this quiet title action filed by a number of named defendants. The district court held:

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 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., 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.

¶11 In her primary brief, Schmidt asserts four issues for appeal. Of these four, only one briefly touches upon the substantive grounds for dismissal, i.e., that she lacks standing to maintain this quiet title action inasmuch as the doctrine of res judicata bars her from asserting an interest in the real estate arising from the “Warranty Deed”. The balance of the issues she raises involves unsubstantiated procedural complaints related to oral argument, discovery, and due process. As fully briefed below, neither the substantive nor the procedural complaints of Schmidt have merit.

III. Standard of Review

¶12 On appeal from a dismissal under N.D.R.Civ.P. 12(b)(6), this Court construes the complaint in the light most favorable to the plaintiff and accepts as true the well-pleaded allegations in the complaint. *Atkins v. State*, 959 N.W.2d 588 (N.D. 2021). A district court's decision granting a Rule 12(b)(6) motion to dismiss a complaint will be affirmed if this Court cannot discern a potential for proof to support it. *Id.* This Court reviews a district court's decision granting a motion to dismiss under N.D.R.Civ.P. 12(b)(6) de novo on appeal. *Id.*

IV. Argument

¶13 As noted above, Schmidt asserts multiple issues on appeal. *Appellant's Brief*, p. 4. These issues can be grouped for responsive purposes into two; one substantive and one procedural. First, Schmidt contends that the district court erred in dismissing her Complaint on the grounds that she lacks standing to maintain this quiet title action inasmuch as the doctrine of res judicata bars her from asserting an interest in the real estate arising from the “Warranty Deed”. Second, Schmidt contends that the district court erred in not affording her additional process. Schmidt’s arguments with respect to both issues are without merit.

A. The district court properly determined that Schmidt lacked standing to maintain this quiet title action

¶14 In the instant matter, the district court concluded that Schmidt lacked standing to maintain this quiet title action in that she was barred from claiming an interest in the subject real estate by the doctrine of res judicata. (R120: ¶8). The district court’s conclusions are fully supported by North Dakota law.

¶15 The doctrine of res judicata prevents re-litigation of claims that were raised, or could have been raised, in prior actions between the same parties or their privies. *Dunford v. Tryhus*, 2021 ND 191, 965 N.W.2d 578 ¶2; *Kulczyk v. Tioga Ready Mix Co.*, 2017 ND 218, ¶10, 902 N.W.2d 485. The doctrine operates to bar courts from relitigating claims and issues in order to promote the finality of judgments, which increases certainty, avoids multiple litigation, wasteful delay and expense, and ultimately conserves judicial resources. *Riverwood Commercial Park LLC v. Standard Oil Co.*, 2007 ND 36, ¶13, 729 N.W.2d 101. The applicability of res judicata is a question of law. *Matter of Rose Henderson Peterson Mineral Trust*, 2022 ND 92, ¶11.

¶16 Schmidt asserts in the instant matter an interest in the Pierce County real property arising from the “Warranty Deed” which is attached to her Complaint. This exact same “Warranty Deed” was the subject of extensive litigation in the case of *In the Matter of the Guardianship and Conservatorship of S.M.H.* 2021 ND 104, 960 N.W.2d 811. In *S.M.H.*, the district court found that the “Warranty Deed” failed to meet the statutory requirements necessary to convey the ward’s interest to Schmidt. *Id.* at ¶6. Schmidt appealed the district court’s decision to this Court. This Court concluded that the validity of the “Warranty Deed” was properly before the district court for resolution (*Id.* at ¶15) and affirmed the district court’s conclusion of law that the “Warranty Deed” was not a valid conveyance of S.M.H.’s interest in the real property. *Id.* at ¶¶23 and 31.

¶17 The identical issue presented in the instant matter was fully litigated in the case of *In the Matter of the Guardianship and Conservatorship of S.M.H.* 2021 ND 104. The validity of the “Warranty Deed” was properly before the district court in *S.M.H.* on Lutheran Social Service’s motion to sell the subject real property. *Id.* at ¶15. Schmidt filed a brief to the district court opposing Lutheran Social Service’s motion to sell and filed a written objection to a proposed order submitted by Lutheran Social Services. *Id.* at ¶5. Schmidt subsequently appealed the district court’s determination that the “Warranty Deed” was invalid to the North Dakota Supreme Court which upheld the district court’s determination.

¶18 The fact that the guardianship was not styled as a quiet title action does not affect the analysis of standing in this matter. The doctrine of res judicata applies even if subsequent claims are based on different theories. *Unger v. North Dakota State University*, 2006 ND 185, ¶11, 721 N.W.2d 16.

¶19 The instant matter demonstrates why the doctrine of res judicata exists. The issue of the validity of the “Warranty Deed” in *S.M.H.* is identical to the issue presented in the instant matter. Schmidt had an opportunity to fully brief and argue the issue of validity of the “Warranty Deed” to the district court in *S.M.H.* Indeed, Schmidt had every opportunity to have her position heard on the issue of the validity of the “Warranty Deed” by the North Dakota Supreme Court. Rather than accept this Court’s determination, Schmidt started this lawsuit (and two others in two other venues).

¶20 The invocation of the doctrine in the instant matter is necessary to promote the purposes of the doctrine. Schmidt continues to attempt to litigate issues which have been conclusively and finally determined by our courts, resulting in delay, unnecessary expense and a waste of judicial resources.

¶21 Following its determination that Schmidt is barred from re-litigating her interest in the property, the district court correctly determined that Schmidt does not have standing to maintain this action. Under North Dakota law, a litigant is required to have an interest, either in an individual or representative capacity in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy in order to invoke the jurisdiction of the court. *Whitecalfe v. N.D. Dep't of Transportation*, 2007 ND 32, ¶15, 727 N.W.2d 779. Whether a party has standing to litigate an issue presents a question of law. *Whitecalfe*, at ¶ 15.

¶22 The requirements to bring and maintain a quiet title action are clearly set forth in N.D.C.C. §32-17-01, which provides:

“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.”

In order to have standing to bring a quiet title action in North Dakota, the plaintiff must possess a legal interest in the subject real property. *Finstad v. Gord*, 2014 ND 72, ¶13, 844 N.W.2d 913.

¶23 Because it has been conclusively established that Schmidt does not have an interest in the subject real property arising from the “Warranty Deed”, she has no standing to maintain a quiet title action under N.D.C.C. §32-17-01. As such, it is respectfully requested that the district court’s determination as to the issue of res judicata and standing be affirmed, in all things.

B. The district court afforded Schmidt the process she was due

¶24 In addition to the substantive complaint addressed above, Schmidt raises multiple complaints related to process throughout her brief. See, *Appellant’s Brief*, generally. None of her various procedural complaints are meritorious.

¶25 First, Schmidt contends that she was wrongfully denied an opportunity to present oral argument on the motions to dismiss her complaint. *Appellant’s Brief*, at p.4 and p 34. This assertion is patently and demonstrably false. Schmidt requested oral argument (R91) and oral argument was held on the motions to dismiss on February 22, 2022 at 1:30 p.m. via Zoom. See R114 and Register of Actions entry for February 22, 2022.

¶26 Second, Schmidt complains that she was denied an opportunity to conduct discovery in this matter. *Appellant’s Brief* at pp.4, 34. Initially, it is noted that Schmidt never served any discovery in this matter and the district court never issued an order prohibiting her from doing so. Regardless, the Rule 12 motions filed in this case presented

only questions of law. Both the question of the application of the doctrine of res judicata and the question of whether a party has standing to litigate an issue are questions of law. *Matter of Rose Henderson Peterson Mineral Trust*, 2022 ND 92, ¶11; *Whitecalf v. N.D. Dep't of Transportation*, 2007 ND 32, ¶15, 727 N.W.2d 779. There simply are no questions of fact for which discovery was necessary nor for which findings needed to be made.

¶27 Finally, Schmidt makes a vague complaint that her constitutional rights have somehow been violated. *Appellant's Brief* at pp. 4 and 36. It is entirely unclear which constitutional rights were allegedly violated. A party must do more than submit bare assertions to adequately raise constitutional issues. *Snyder v. North Dakota Workers Compensation Bureau*, 2001 ND 38, ¶19, 672 N.W.2d 712. A party asserting a constitutional claim must bring up the heavy artillery or forgo the claim. *Grand Forks Professional Baseball, Inc. v. North Dakota Workers Compensation Bureau*, 2002 ND 204, 654 N.W.2d 426. Schmidt does not identify whether she is asserting violations of the state or federal constitution; nor which provision(s) within said constitution(s); nor the alleged violation. Schmidt's claim to a constitutional violation is without merit.

V. Conclusion

¶28 Schmidt has presented no substantive nor procedural errors on appeal to this Court. It is respectfully requested that the district court be, in all things, affirmed.

Dated this 11th day of October, 2022.

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CERTIFICATE OF COMPLIANCE

¶29 The undersigned, as the attorney representing Appellee Lutheran Social Service of Minnesota, and the author of the above and foregoing Brief of Appellee, hereby certifies that said Brief complies with Rule 32(a)(8)(A) of the North Dakota Rules of Appellate Procedure, in that the Brief does not exceed 38 pages which includes footnotes and endnotes. The page count was verified with the assistance of the undersigned's word processing software.

Dated this 11th day of October, 2022.

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CERTIFICATE OF SERVICE

I certify that on October 11th, 2022, a true and correct copy of the foregoing Brief of Lutheran Social Service, as Guardian for S.M.H., and Eryn Jager and Diane Osland was served upon the following via email:

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