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**STATE OF MINNESOTA
IN COURT OF APPEALS
A14-0449**

In the Matter of the Application of Gene Rechtzigel,
Pro Se, to Determine Boundary and
Title to Certain Land.

**Filed November 24, 2014
Affirmed in part and reversed in part
Stoneburner, Judge***

Dakota County District Court
File No. 19HA-CV-13-3731

Gene Rechtzigel, Apple Valley, Minnesota (pro se appellant)

Matthew S. Duffy, Kristin Kingsbury, Monroe Moxness Berg PA, Minneapolis,
Minnesota (for Fischer Sand & Aggregate, LLP)

Considered and decided by Hudson, Presiding Judge; Larkin, Judge; and
Stoneburner, Judge.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the dismissal of his action to establish a boundary by
practical location and the imposition of a sanction enjoining him from further litigating

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

ownership or boundary issues previously determined in earlier litigation. We affirm dismissal of appellant's action but reverse the imposition of a sanction because the district court failed to make required findings to support the sanction.

FACTS

In 2009, respondent Fischer Sand & Aggregate, LLP (Fischer) initiated an action to register under the Torrens Act two parcels of land and an "orphaned" 19-foot strip of land (the gap) that abuts one of the parcels (parcel 2) on the west side. Fischer asserted ownership of the gap by adverse possession. This appeal involves only the boundary between parcel 2 and the gap.

Appellant Gene Rechtzigel, pro se, on behalf of himself and as trustee of several family trusts, opposed Fischer's action, asserting ownership of the gap and claiming that the eastern boundary of the gap extends approximately four feet into parcel 2, marked by a historic boundary fence. The district court rejected Fischer's adverse possession claim to the gap and, by a judgment filed on November 12, 2013, granted Fischer's amended application¹ to register parcel 2. The district court rejected Rechtzigel's claim that evidence of an old fence line establishes the boundary between the gap and parcel 2. The district court held that the gap does not extend into parcel 2, concluded that Fischer is the owner in fee simple of parcel 2 to the full extent of the legal description contained in

¹ The amended application omitted Fischer's claim to the gap.

Fischer's amended application, and held that no one else has any claim to the property. Rechtzigel's appeal of the November 12, 2013 judgment is pending in this court.²

Approximately two weeks after the district court issued the November 12, 2013 judgment, Rechtzigel, again acting pro se, mailed a summons and complaint to Fischer's counsel, purporting to initiate an "action to determine boundary lines and application of action to determine boundary lines by jury trial." In this action, Rechtzigel, who has not yet initiated an action to register ownership of the gap, again attempts to establish that the gap extends into parcel 2 to what he describes as "landmarks of the Minn. Stat[.] 344.02 grandfathered in farm fence property line." Rechtzigel also filed a notice of lis pendens on parcel 2.

Fischer moved to dismiss on several grounds, including insufficiency of process, failure to state a claim on which relief can be granted, and lack of subject matter jurisdiction based on Rechtzigel's failure to follow procedures required by the Torrens Act for actions regarding registered land. Fischer moved separately for sanctions under Minn. Stat. § 549.211 (2012) and Minn. R. Civ. P. 11.02, based on Rechtzigel's (1) commencing an action that could be asserted only by the family trusts; (2) unauthorized practice of law by purporting to represent the trusts; (3) failure to properly acknowledge his pleadings; and (4) initiating the action to harass Fischer after filing "numerous, baseless motions, four appeals from non-final court orders, a petition for writ of prohibition and parallel actions." Rechtzigel did not respond to the motions

² *In re Application of Fischer Sand & Aggregate, LLP*, A14-0735, was not yet scheduled for hearing in this court at the time of the hearing in this appeal.

but appeared for the hearing on the motions and requested a continuance. The district court declined to postpone the hearing and allowed Rechtzigel to argue in opposition to the motions. Subsequently, the district court issued an order granting Fischer's motion to dismiss based on Rechtzigel's failure to comply with statutory and rule requirements for actions involving Torrens property. The district court dismissed the notice of lis pendens on parcel 2 and enjoined Rechtzigel and any Rechtzigel family trust "from filing any further actions to further litigate ownership or boundaries" of parcels 1 or 2, referencing the November 12, 2013 judgment of the district court in the registration action and "the application of the doctrine of res judicata." This appeal followed.

D E C I S I O N

1. The district court did not err by dismissing Rechtzigel's action for failure to comply with procedural requirements for registration of Torrens property.

On appeal, Rechtzigel does not dispute that actions affecting Torrens property are subject to strict procedural requirements and does not argue that he complied with those requirements. *See* Minn. Stat. §§ 508.01-.84 (2012) (Torrens Act); Minn. R. Gen. Prac. 211 (addressing interlocutory boundary determinations). Instead, he argues that he need not comply with those requirements because his action is brought under Minn. Stat. §§ 559.01-.25 (2012), which is "governed by the rules governing civil actions, except as herein otherwise provided." Minn. Stat. § 559.24. He argues that the Torrens Act does not apply to his action.

We find no merit to Rechtzigel's argument. The procedure for seeking a judicial determination of a boundary line of one or more Torrens properties is set out in Minn.

Stat. § 508.671. “Section 508.671 *shall* apply in a proceedings subsequent to establish a boundary by practical location for registered land.” Minn. Stat. § 508.02 (emphasis added). And “[s]hall is mandatory.” Minn. Stat. § 645.44, subd. 16 (2012) (quotation marks omitted). Further, caselaw firmly establishes that failure to follow Torrens Act procedures precludes consideration of claims to establish the boundaries of registered property. *See Britney v. Swan Lake Cabin Corp.*, 795 N.W.2d 867, 870 (Minn. App. 2011) (citing *In re Geis*, 576 N.W.2d 747, 749-50 (Minn. App. 1998), *review denied* (Minn. May 28, 1998), for the proposition that matters related to Torrens properties are governed by the Torrens Act); *Phillips v. Dolphin*, 776 N.W.2d 755, 758 (Minn. App. 2009) (“When the Torrens Act specifies the procedure necessary to take some action regarding registered land, parties and district courts must follow this procedure.”), *review denied* (Minn. Mar. 16, 2010); *Park Elm Homeowner’s Ass’n v. Mooney*, 398 N.W.2d 643, 646-47 (Minn. App. 1987) (holding that the district court lacked authority to issue an order that adversely affected title to registered lands because the district court did not comply with the Torrens Act). When an applicant fails to follow the procedural requirements of the Torrens Act, the district court must dismiss the action. *See Britney*, 795 N.W.2d at 871. To the extent that the provisions of the Torrens Act conflict with chapter 559, we apply the more particular provisions of the Torrens Act in this proceeding. *See* Minn. Stat. § 645.26, subd. 1 (2012) (setting forth rule of statutory construction that when a special provision in one statute is in irreconcilable conflict with a general provision in another statute, “the special provision shall prevail”). The district

court did not err by dismissing Rechtzigel's complaint for failure to comply with the procedural requirements of section 508.671 and Minn. R. Gen. Prac. 211.³

2. Res judicata bars Rechtzigel's relitigation of matters already determined by the district court.

The district court acknowledged that the doctrine of res judicata also bars Rechtzigel and the family trusts from relitigating the ownership or boundaries of parcel 1 and parcel 2 because the district court made a final ruling on these issues in the registration action. "Res judicata is a finality doctrine that mandates that there be an end to litigation." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004). A party is barred from bringing a claim that was, or could have been, raised in an earlier action. *Drewitz v. Motorwerks, Inc.*, 728 N.W.2d 231, 239 (Minn. 2007). Res judicata is available if "(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." *Brown-Wilbert, Inc. v. Copeland Buhl & Co., P.L.L.P.*, 732 N.W.2d 209, 220 (Minn. 2007) (quotation omitted).

All of the elements of res judicata are met here. In Fischer's registration action involving the same parties, the district court fully considered Rechtzigel's claim that a

³ To the extent that Rechtzigel appears to raise a fraud issue or any other new issues only in his reply brief, we decline to consider those issues. See *McIntire v. State*, 458 N.W.2d 714, 717 n.2 (Minn. App. 1990) (stating that issues not addressed in an appellant's principal brief are "waived and cannot be revived by addressing them in the reply brief"), review denied (Minn. Sept. 28, 1990); see also Minn. R. Civ. App. P. 128.02, subd. 4 ("The reply brief must be confined to new matter raised in the brief of the respondent.").

fence line on parcel 2 establishes the boundary between the gap and parcel 2. The claims by Rechtzigel in the registration action and in this action involve the same “operative nucleus of facts.” See *Anderson v. Werner Cont’l, Inc.*, 363 N.W.2d 332, 335 (Minn. App. 1985) (stating that for purposes of res judicata, claims are construed as identical “if the same operative nucleus of facts is alleged in support of the claims”), *review denied* (Minn. June 24, 1985). Rechtzigel had a full and fair opportunity to litigate his claims in the prior action, and the district court held that (1) his evidence was insufficient to meet his burden of proof to establish the existence of a fence line as the boundary of the gap and parcel 2; (2) the boundary of parcel 2 is as described in Fischer’s amended registration application; and (3) neither Rechtzigel nor any of the Rechtzigel family trusts have any claim of ownership under any alternate theory to any portion of parcel 2. Rechtzigel’s claims are therefore barred by res judicata.⁴

3. The district court failed to make sufficient findings to support the imposition of a sanction.

Fischer’s motion for sanctions under Minn. Stat. § 549.211 and Minn. R. Civ. P. 11 is based on Fischer’s assertion that Rechtzigel brought this action for an improper purpose and made claims unwarranted by existing law or any argument favoring an establishment of new law. The district court, without making any findings, imposed the sanction of enjoining Rechtzigel or any of the Rechtzigel trusts from further litigating issues of ownership or the boundaries of parcels 1 or 2.

⁴ We reject Rechtzigel’s assertion that the district court’s judgment in the registration action is not final during the pendency of his appeal in that action. A judgment is final, for purposes of res judicata, when entered, notwithstanding a pending appeal. *Brown-Wilbert*, 732 N.W.2d at 221.

“[Sanctions] under Minn. Stat. § 549.211 and rule 11 are discretionary with the district court and will not be altered on appeal absent an abuse of discretion, but appellate courts review de novo a district court’s construction of statutes and rules, including Minn. Stat. § 549.211 and rule 11.” *In re Rollins*, 738 N.W.2d 798, 803 (Minn. App. 2007).

Section 549.211 permits an award of sanctions when the district court determines that a claim has been presented for an improper purpose. *See, e.g., Radloff v. First Am. Nat’l Bank of St. Cloud, N.A.*, 470 N.W.2d 154, 156 (Minn. App. 1991) (stating that the statutory provision for sanctions “requires bad faith, a frivolous claim which increases opponent’s costs, an unfounded position taken to delay the action or harass the opponent, or fraud upon the court,” and that under rule 11, an attorney or party has an affirmative duty, before signing a document, reasonably to investigate the factual and legal bases of claims made to determine that they are well grounded and not made for an improper purpose, such as to harass, increase costs, or delay proceedings), *review denied* (Minn. July 24, 1991). “[P]ro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. App. 2001).

Fischer advanced several credible arguments to support the sanction imposed by the district court, but the district court did not make any findings related to the sanction and did not address the conduct that the district court found objectionable. “Both section 549.211 and rule 11 require the district court when imposing sanctions to make factual findings as to the improper conduct and explain the basis for the sanction.” *In re the Claims for No-Fault Benefits Against Progressive Ins. Co.*, 720 N.W.2d 865, 874 (Minn.

App. 2006) (citing Minn. Stat. § 549.211, subd. 5(c), and Minn. R. Civ. P. 11.03(c)), *review denied* (Minn. Nov. 22, 2006). “The district court abuse[s] its discretion when it impose[s] sanctions without complying with these requirements.” *Id.* Because the district court abused its discretion in the imposition of a sanction, we reverse the portion of the order enjoining Rechtzigel and any Rechtzigel trust from further litigating ownership or boundaries of parcels 1 and 2. The reversal of this sanction, however, does not remove the bar to such litigation that exists under the doctrine of *res judicata*.

In his reply brief, Rechtzigel asserts that the district court did not have authority to discharge the notice of *lis pendens* as a sanction. But the district court did not discharge the notice of *lis pendens* as a sanction. “[A] notice of *lis pendens* is properly filed only if plaintiff pleads a cause of action which involves or affects the title to, on any interest in or on a lien upon, specifically described real property.” *St. Croix Dev., LLL v. Gossman*, 735 N.W.2d 320, 323 (Minn. 2007) (quotation omitted). Because dismissal of Rechtzigel’s action removes the basis for the notice of *lis pendens*, the district court properly granted Fischer’s motion to discharge the notice of *lis pendens*.

Affirmed in part and reversed in part.