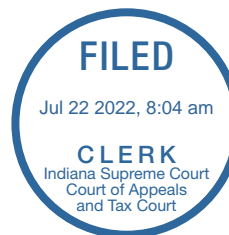


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEYS FOR APPELLANT

Natalie J. Booher
John J. Schwarz II
Schwarz Law Office, PC
Royal Center, Indiana

ATTORNEY FOR APPELLEE

Michele L. Lorbieski
Hewitt Law & Mediation, LLC
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Atkins Farms, LLC and Randall
Atkins,
Appellants-Plaintiffs,

v.

The Estate of Olive J. Moorman
by Personal Representatives
Terry D. Moorman and Cheryl
E. Boyle, Terry D. Moorman,
individually, Cheryl E. Boyle,
individually, and Curt Presnall,
Appellees-Defendants.

July 22, 2022

Court of Appeals Case No.
21A-PL-2286

Appeal from the
Grant Circuit Court

The Honorable
Mark E. Spitzer, Judge

Trial Court Cause No.
27C01-2105-PL-38

Molter, Judge.

- [1] When Olive Moorman died in 2020, she, along with other members of the Moorman family, owned an interest in roughly 300 acres of farmland. Atkins Farms, LLC, was a tenant on the property and had been farming it for several years. Randall Atkins, Olive’s son-in-law, operated Atkins Farms and owned a small interest in the land. (We refer to Atkins Farms, LLC and Randall Atkins collectively as “Atkins.”)
- [2] After Olive’s death, her estate was opened as a supervised estate in the Delaware County Circuit Court. Her two surviving children, as personal representatives of her estate, subsequently notified Randall that he had to vacate the farm after his tenancy expired. They also leased the property to a new party after obtaining permission from the Delaware County Circuit Court. Atkins filed a motion to reconsider, but the Delaware County Circuit Court denied it.
- [3] Atkins then sued his brother-in-law and sister-in-law, Olive’s estate, and the farm’s new tenant in Grant County. The trial court dismissed the complaint, holding that res judicata barred the claims. While we express no opinion on the merits of Atkins’ claims, we conclude the trial court erred by dismissing the claims on the basis of res judicata. We therefore reverse and remand to the trial court for further proceedings.

Facts and Procedural History

- [4] After Maxwell Moorman passed away, he left his family’s farm to his wife, Olive, and his three children—Terry Moorman, Cheryl Boyle, and Deanna Atkins. Olive inherited a one-half interest in the property, which was jointly

titled and included approximately 298 acres of tillable farmland, while Terry, Cheryl, and Deanna each inherited a one-sixth interest in it. Years later, Deanna passed away, and her husband, Randall, inherited her one-sixth interest. Randall, through Atkins Farms, farmed the land, which he says was pursuant to an oral lease agreement.

[5] On May 9, 2020, Olive passed away. Terry and Cheryl were named as personal representatives of her estate, and the estate was opened as a supervised estate in the Delaware County Circuit Court (the “Probate Court”). Also, the estate acquired Olive’s original one-half interest in the property.

[6] A few months after Olive’s death, Terry and Cheryl, as personal representatives of her estate, notified Randall that he had to vacate the property when his tenancy expired. Then, on March 16, 2021, the estate filed its Petition for Authority to Lease Real Estate, requesting authorization from the Probate Court to lease the property to Curt Presnall. The Probate Court issued an order approving the lease two days later, and the estate entered into a lease agreement with Presnall that day covering all 298 acres.

[7] On March 30, 2021, Randall filed a motion to reconsider. The Probate Court issued an order, days later, denying the motion because he failed to timely file an objection. The Probate Court also stated:

[I]n looking at [the motion] on the merits, [it] does not say the [lease agreement] is a bad business decision or below market value. It says the person with a 1/6 interest does not want to enter the [agreement]. It seems more prudent for the [Probate

Court] to exercise its discretion in favor of allowing the acreage to be farmed for the 2021 season and having the proceeds held until further court order.

Appellant's App. Vol. 2 at 13.

- [8] Then, one month later, Atkins filed a complaint in the Grant Circuit Court (the "Trial Court") against Terry and Cheryl, in their individual capacities and as personal representatives of Olive's Estate, and Presnall. The complaint included claims for breach of lease, unjust enrichment, fraud, and tortious interference with a contract. After hearing the parties' arguments in the fall of 2021, the Trial Court dismissed the complaint, holding that res judicata barred Atkins' claims. Atkins now appeals.

Discussion and Decision

I. Standard of Review

- [9] This court reviews a trial court's ruling on a motion to dismiss de novo. *Freels v. Koches*, 94 N.E.3d 339, 342 (Ind. Ct. App. 2018). A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. *First Am. Title Ins. Co. v. Robertson*, 65 N.E.3d 1045, 1049 (Ind. Ct. App. 2016), *trans. denied*. We therefore assume for purposes of the motion only that all of the plaintiff's allegations are true. We also "view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the non-movant's favor." *Kitchell v. Franklin*, 997 N.E.2d 1020, 1025 (Ind. 2013) (quotation marks omitted). If a complaint sets forth facts that,

even if true, would not support the requested relief, we will affirm. *Freels*, 94 N.E.3d at 342.

II. Res Judicata

- [10] Res judicata is a doctrine that prevents “repetitious litigation of disputes that are essentially the same.” *Marion Cnty. Cir. Ct. v. King*, 150 N.E.3d 666, 672 (Ind. Ct. App. 2020), *reh’g denied, trans. denied*. The doctrine includes both claim preclusion and issue preclusion, also referred to as collateral estoppel. *Dawson v. Est. of Ott*, 796 N.E.2d 1190, 1195 (Ind. Ct. App. 2003). Although the Trial Court dismissed Atkins’ claim based on res judicata, we conclude that neither branch of res judicata applies here.
- [11] Claim preclusion prohibits parties from litigating an action when a final judgment on the merits has been rendered on the same claim between the same parties. *King*, 150 N.E.3d at 672. For claim preclusion to apply, four factors must be present: (1) the former judgment must have been rendered by a court of competent jurisdiction; (2) the former judgment must have been rendered on the merits; (3) the matter now in issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action must have been between parties to the present suit or their privies. *Id.* Critical here, “claim preclusion applies only when the party against which it will be applied had a full and fair opportunity to litigate the issues,” and it does not apply “when application would be unfair given the circumstances.” *Ind. Dep’t of Env’t*

Mgmt. v. Raybestos Prod., Co., 897 N.E.2d 469, 476 (Ind. 2008), *opinion corrected on reh'g* by 903 N.E.2d 471 (Ind. 2009).

[12] Atkins did not have a full and fair opportunity to litigate his claims for breach of contract, unjust enrichment, fraud, and tortious interference with a contract—all related to his theory that the defendants breached his oral lease to farm the ground at issue—in the prior action, which related to a future lease of the farm ground and presented a different dispute. In the prior probate matter, the court’s ruling was on the Co-Personal Representatives’ Petition for Authority to Lease Real Estate. That petition was seven paragraphs long and did not even mention Atkins’ alleged oral lease. It merely stated the petitioners were the co-personal representatives of the estate, a prospective tenant wished to farm the land, and the petitioners approved the terms of the proposed lease, which was attached to the petition. The Probate Court granted the petition just two days later, before any response was filed.

[13] While Atkins filed a motion to reconsider objecting to the lease on the basis that it would require breaking his alleged oral lease, and he argued that was a reason for the Probate Court to exercise its discretion to deny the request to enter into a new lease, the Probate Court did not—and it was not required to—decide whether there was any breach. Instead, the court concluded Atkins’ objection did not mean leasing to a new tenant was “a bad business decision or below market value,” and it was “more prudent for the Court to exercise its discretion in favor of allowing the acreage to be farmed for the 2021 season and having the proceeds held until further court order.” Appellant’s App. Vol. 2 at 13.

[14] Appellees acknowledge Atkins' claims in this action were not decided in the probate matter, but they argue Atkins *could have* raised them there, and res judicata covers not only claims that were finally adjudicated on the merits, but also claims which could have been. *King*, 150 N.E.3d at 672. The problem with this argument is that it misapprehends the nature of the action in the Probate Court. That was not litigation where Appellees asserted claims against Atkins, and he could have filed counterclaims. Instead, the Probate Court was simply deciding whether to exercise its discretion to approve a new lease which the Co-Personal Representatives had approved. It did not purport to address any related legal claims, and the Petition did not create a forum for Atkins to litigate his legal claims pertaining to the alleged prior lease.

[15] The Probate Court's exercise of discretion to approve the new lease is not even inconsistent with Atkins' allegation that he had a prior lease the petitioners were breaching. *See State ex rel. Ind. Fam. & Soc. Servs. Admin. v. Int'l Bus. Machines Corp.*, 4 N.E.3d 696, 730 (Ind. Ct. App. 2014) (acknowledging the doctrine of "efficient breach"—"an intentional breach of contract and payment of damages by a party who would incur greater economic loss by performing under the contract"—which stems from "the view that a party should be allowed to breach a contract and pay damages if doing so would be more economically efficient than performing under the contract."), *trans. granted, opinion vacated sub nom. State v. Int'l Bus. Machines Corp.*, 14 N.E.3d 44 (Ind. 2014), *and opinion aff'd in part, vacated in part sub nom. State v. Int'l Bus. Machines Corp.*, 51 N.E.3d 150 (Ind. 2016). In any event, the Probate Court's order

approving a request to enter into a new lease based on a brief petition did not afford Atkins a forum to fully and fairly litigate the claims he raises in this action. We therefore conclude that claim preclusion does not bar his claims in this action.

[16] Issue preclusion does not bar Atkins' claims either. "Issue preclusion bars the subsequent litigation of a fact or issue that was necessarily adjudicated in a former lawsuit if the same fact or issue is presented in the subsequent lawsuit." *Angelopoulos v. Angelopoulos*, 2 N.E.3d 688, 696 (Ind. Ct. App. 2013), *trans. denied*. Critical here, "the former adjudication is conclusive only as to those issues that were actually litigated and determined therein. Thus, issue preclusion does not extend to matters that were not expressly adjudicated and can be inferred only by argument." *Id.*

In determining whether issue preclusion is applicable, a court must engage in a two-part analysis: (1) whether the party in the prior action had a full and fair opportunity to litigate the issue and (2) whether it is otherwise unfair to apply issue preclusion given the facts of the particular case. The non-exhaustive factors to be considered by the trial court in deciding whether to apply issue preclusion include: (1) privity, (2) the defendant's incentive to litigate the prior action, and (3) the ability of the plaintiff to have joined the prior action.

Id.

[17] As explained in the context of claim preclusion, the probate matter—which entailed cursory motion practice—did not afford Atkins a full and fair opportunity to adjudicate the issues he raises in this action. Moreover, the

issues his claims present here are different than the issue adjudicated in the prior probate action. In that action, the Probate Court determined it was prudent for the Co-Representatives to rent the farm ground to someone else for the upcoming planting season. The Probate Court did not, and did not purport to, decide whether there was an oral lease with Atkins, whether that lease was breached, whether the estate was unjustly enriched, whether Atkins was defrauded, or whether Presnall tortiously interfered with Atkins' alleged oral lease. Issue preclusion therefore does not bar Atkins' claims.

[18] Because neither claim preclusion nor issue preclusion barred Atkins' claims, his claims should not have been dismissed at the pleadings stage. We therefore reverse and remand to the Trial Court for further proceedings.

[19] Reversed and remanded.

Riley, J., and Robb, J., concur.