

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANTS

Aaron Kemper
Louisville, Kentucky

ATTORNEYS FOR APPELLEES

Jon L. Bucher
Stacey A. Everton
Schultz & Pogue, LLP
Indianapolis, Indiana

Ralph Melbourne
Church Langdon Lopp Banet, &
LLC
New Albany, Indiana

IN THE COURT OF APPEALS OF INDIANA

Gabor Spruch and Sherri
Spruch,
Appellants-Defendants,

v.

C & S Handy Man Service,
Charles Potter, and Suzanne
Buchanan-Potter,
Appellees-Plaintiffs.

September 27, 2023

Court of Appeals Case No.
22A-SC-2847

Appeal from the Floyd Superior
Court

The Honorable Julie Fessel
Flanigan, Magistrate

Trial Court Cause No.
22D02-2208-SC-608 & 22D02-
2212-CC-1446

Memorandum Decision by Judge Riley.

Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] In this consolidated appeal, Appellants-Plaintiffs, Gabor and Sherrie Spruch (Spruchs), appeal the small claims court's Order, issued on November 1, 2022, granting Appellees-Defendants, C&S Handyman Service, Charles Potter, and Suzanne Buchanan-Potter's (collectively, Handyman), counterclaim for damages. The Spruchs also appeal the small claims court's Order, issued on November 18, 2022, denying their motion to set aside the November 1, 2022 Order in favor of Handyman and dismissing their Notice of Claim with prejudice. Thirdly, the Spruchs appeal the trial court's Order, dismissing the Spruchs' Complaint with prejudice.

[2] We reverse and remand.

ISSUES

[3] The Spruchs present this court with five issues on appeal, of which we find the following two issues dispositive:

- (1) Whether the small claims court erred by granting Handyman's counterclaim for damages on November 1, 2022; and
- (2) Whether the trial court abused its discretion by dismissing the Spruchs' Complaint with prejudice.

FACTS AND PROCEDURAL HISTORY

[4] This appeal arises out of a contractual dispute between the parties involving two different repair projects. Sometime in March 2022, the Spruchs entered into a contract with Handyman for the removal of a bathtub and installation of a shower at the Spruchs' primary residence (Bathroom Remodel case). After the installation of the shower, the Spruchs noticed a leak, which soaked the bathroom floor and damaged the ceiling of the Spruchs' basement. The second project for which the Spruchs entered into a contract with Handyman involved the remodel of a deck at the home of Sherrie Spruchs' father, who lived close by (Deck Remodel case). An issue with the deck installation required additional repairs from an outside contractor.

[5] On August 12, 2022, the Spruchs filed two claims against Handyman with the Floyd Superior Court's small claims division. First, the Spruchs filed a Notice of Claim against Handyman in the Bathroom Remodel case, claiming damages in the amount of \$11,107.84. They also filed a Notice of Claim in the Deck Remodel case, alleging damages in the amount of \$2,647. Both cases were scheduled for a small claims court hearing on September 20, 2022. On August 19, 2022, Handyman filed a motion for a continuance in the Bathroom Remodel case, which was granted by the small claims court, and the hearing was rescheduled for November 1, 2022. On its own motion, the small claims court rescheduled the Deck Remodel case for the same date as the Bathroom Remodel case—November 1, 2022. On October 12, 2022, Handyman filed a

counterclaim in the Bathroom Remodel case for \$3,552.06 and in the Deck Remodel case for \$295.

[6] During the hearing on November 1, 2022, the Spruchs did not appear personally. Counsel for the Spruchs appeared in the Deck Remodel case and requested a continuance, which was granted by the small claims court.¹ After being informed that a second case involving the Spruchs—the Bathroom Remodel case—was also being heard by the small claims court that day, counsel requested to appear on the Spruchs’ behalf, which was denied by the small claims court. The small claims court dismissed the Bathroom Remodel case without prejudice and granted Handyman’s counterclaim in the amount of \$3,552.06. That same day, the Spruchs, now represented by counsel, filed a motion to set aside the default judgment on the counterclaim and the order of dismissal. In their motion, the Spruchs informed the small claims court of the passing of Sherri Spruch’s father on October 11, 2022, and further advised the small claims court:

[The Spruchs] have been grieving the death of Sherrie Spruch’s father, Terry O’Connor. They hired the undersigned counsel in the above matter a few days before the small claims trial, specifically because [Handyman] had hired counsel. [The Spruchs’] counsel inadvertently filed an appearance in 22D02-2208-SC-000609 [Deck Remodel case] instead of 22D02-2208-SC-000608 [Bathroom Remodel case]. [Handyman] had hired

¹ A small claims hearing in the Deck Remodel case was conducted on January 10, 2023. On January 13, 2023, the small claims court issued an Order, awarding zero damages to either party. The parties do not appeal the Deck Remodel case.

counsel in [the Bathroom Remodel case] but not [in the Deck Remodel case]. [The Spruchs'] Counsel filed an appearance and a Motion to Continue in [the Deck Remodel case]. Both small claims hearings were set for Tuesday November 1, 2022 at 1:15 PM. [Spruchs'] Counsel appeared in [c]ourt but was confused about which case had the default counterclaim entered and the [Spruchs'] case [was] dismissed for not appearing.

(Appellant's App. Vol. II, p. 36). On November 18, 2022, without a hearing, the small claims court denied the Spruchs' motion to set aside the default judgment, dismissed the Notice of Claim with prejudice, and affirmed the judgment on the counterclaim. On December 1, 2022, the Spruchs appealed.

[7] On December 13, 2022, the Spruchs filed a Complaint against Handyman with the Floyd Superior Court (trial court) asserting claims stemming from Handyman's perceived defective work on the bathroom remodel project. Specifically, the Spruchs contended that Handyman provided an estimate that did not comply with the Indiana Home Improvement Contracts Act and that by knowingly violating the Indiana Home Improvement Contracts Act, Handyman engaged in unfair and deceptive acts in violation of Indiana's Deceptive Consumer Sales Act. On January 3, 2023, Handyman moved to dismiss the Spruchs' Complaint pursuant to Indiana Trial Rule 12(B)(6), and advanced that the Spruchs' claims were barred pursuant to the doctrine of claim preclusion because the small claims court had rendered a final judgment on the merits with respect to these same claims between the same parties. The following day, January 4, 2023, the trial court granted Handyman's motion to dismiss without a hearing. On January 17, 2023, the Spruchs filed a motion to

reconsider the dismissal, which was denied by the trial court. On January 30, 2023, the Spruchs appealed.

- [8] On February 3, 2023, this court granted the Spruchs' motion to consolidate the appeals of the small claims court's decisions and the trial court's decision. This instant appeal ensued. Additional facts will be provided as necessary.

DISCUSSION AND DECISION²

- [9] In this consolidated appeal, the Spruchs raised several issues stemming from the default judgment on Handyman's counterclaim issued by the small claims court on November 1, 2022, the small claims court's denial of their motion to set aside the default judgment on November 18, 2022, and the trial court's dismissal with prejudice of their Complaint. With respect to the small claims court's Orders, the Spruchs contend that the small claims court abused its discretion by preventing counsel from entering an appearance in open court in the Bathroom Remodel case, by refusing to continue the Bathroom Remodel case, and instead by entering a default judgment on Handyman's counterclaim without receiving any evidence on November 1, 2022, in violation of Small Claims Rules 4(B) and 10. The Spruchs also maintain that the small claims court abused its discretion by dismissing the Bathroom Remodel case with

² Although the Spruchs brought a Notice of Claim, seeking recovery of damages in the amount of \$11,107.84 which is in excess of the small claims court subject matter jurisdiction limit of \$10,000 pursuant to Indiana code section 33-29-2-4, Small Claims Rule 2(A)(2) provides that "[a] plaintiff filing an action under these rules waives the excess of the plaintiff's claim over the jurisdictional maximum of the small claims court or docket in which the case is decided[.]"

prejudice on November 18, 2022 following a denial of their motion to set aside the default judgment. With respect to the trial court, the Spruchs assert that the trial court abused its discretion by granting Handyman’s motion to dismiss pursuant to Indiana Trial Rule 12(B)(6) and dismissing the Spruchs’ Complaint with prejudice. Despite the plethora of issues raised by the Spruchs, we find two issues dispositive.

I. *Default Judgment*

[10] Addressing the Spruchs’ contentions with respect to the default judgment issued in favor of Handyman on November 1, 2022, we first evaluate Handyman’s allegation that the Spruchs forfeited their right to appeal by failing to comply with Indiana Appellate Rule 9. Appellate Rule 9(F)(8)(a) provides that “[a] copy of the judgment or order being appealed[] must be attached to the notice of appeal.” Handyman asserts that the Spruchs failed to attach a copy of the November 1, 2020 default judgment to their notice of appeal and therefore cannot appeal the small claims court’s Order of November 1, 2022.

[11] In their notice of appeal, the Spruchs detailed as their “Designation of Appealed Order of Judgment,” the judgments with date of “November 1, 2022 and November 18, 2022. Title of Judgment/Order being appealed: Default Judgment Entered (Counterclaim).” (*See* Notice of Appeal). They attached to this notice, a copy of their motion to set aside order of dismissal and default judgment of counterclaim, dated November 1, 2022, a copy of the small claims court Order denying the motion to set aside, dated November 18, 2022, and a

copy of the small claims court’s chronological case summary. While the Spruchs failed to attach the small claims court’s default judgment on counterclaim rendered on November 1, 2022, the Spruchs included the default judgment as an exhibit to their appellate brief, and as a document in their appendix, in accordance with Indiana Appellate Rule 46(A)(12). While we agree with Handyman that no copy of the appealed Order issued on November 1, 2022 was attached to Spruchs’ notice of appeal, the appealed order was sufficiently listed in detail on the notice of appeal and included in the Appendix for Handyman to be placed on notice that the Spruchs were appealing the November 1, 2022 default judgment. Handyman cites no persuasive authority that the Spruchs’ forfeited their right to appeal any of the issues raised in their brief by failing to attach the November 1, 2022 judgment to their notice of appeal.

[12] Turning to the merits of their appellate argument,³ the Spruchs contend that the small claims court abused its discretion by issuing a default judgment on

³ We recognize that the Spruchs directly appealed the default judgment issued on November 1, 2022 and appealed the denial of their motion to set aside the default judgment rendered on November 18, 2022. Small Claims Rule 10(C) is an important vehicle for securing relief from the effect of a default judgment “within one year after entering a default judgment” and “upon good cause shown.” Without any language to the contrary, Small Claims Rule 10(C) functions to permit a party to challenge a judgment at a point subsequent to the expiration of time allowed for initiating a direct appeal. However, here, the Spruchs filed their notice of appeal on December 1, 2022. As their notice of appeal was filed within the thirty days of the entry of the November 1, 2022 default judgment, the Spruchs could pursue a direct appeal. *See* Ind. Appellate Rule 9(A). Because the Spruchs are proceeding on direct appeal and not via an appeal to the denial of their motion to set aside, we find Handyman’s argument that the Spruchs’ contentions are limited to a showing of good cause to set aside the default judgment and that they cannot raise a violation of Small Claims Rule 10 to be without merit.

Handyman's counterclaim without considering any evidence, in violation of Small Claims Rule 10, which governs the dismissal and default proceedings in small claims courts and which provides, as follows:

(A) Dismissal. If the plaintiff fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may dismiss the action without prejudice. If a counterclaim has been filed the court may grant judgment for the defendant after first making an inquiry similar to that required by S.C. 10(B) in the case of default judgments. []

(B) Default. If the defendant fails to appear at the time and place specified in the notice of claim, or for any continuance thereof, the court may enter a default judgment against him. Before default judgment is entered, the court shall examine the notice of claim and return thereof and make inquiry, under oath, of those present so as to assure the court that:

(1) Service of notice of claim was had under such circumstances as to establish a reasonable probability that the defendant received such notice;

* * * *

(4) the plaintiff has a prima facie case.

After such assurance, the court may render default judgment and, upon entering such judgment, shall assess court costs against the defendant.

In support of their contention that the small claims court violated Rule 10 when issuing its default judgment in favor of Handyman, the Spruchs posit that no

prima facie case was established prior to the grant of the default judgment. Although the small claims court noted in its Default Judgment on Counterclaim issued on November 1, 2022, that the court “heard the evidence presented by [Handyman],” a review of the hearing’s transcript reveals that no inquiry was made under oath, no testimony was heard, nor were any documents received into evidence by the small claims court prior to entering the judgment on the counterclaim. (Appellants’ App. Vol. II, p. 28). As no “assurance” was provided and no evidence was admitted to establish Handyman’s requested damages, “it appears that it was an error of law for the court to have granted the default judgment in any amount.” *Rosenberg v. Robinson*, 38 N.E.3d 693, 700 (Ind. Ct. App. 2015) (citing *Smith v. Patel*, 560 N.E.2d 1260, 1260 (Ind.Ct.App.1990)). Therefore, we reverse the small claims court’s entry of default judgment issued on November 1, 2022.⁴

II. *Motion for Failure to State a Claim*

[13] On December 13, 2022, the Spruchs filed a Complaint against Handyman with the trial court asserting claims stemming from Handyman’s perceived defective

⁴ The Spruchs do not appeal the dismissal of their Notice of Claim without prejudice. Because the small claims court’s entry of default judgment and dismissal with prejudice of November 18, 2022 are derived from a judgment that we have now reversed, we declare the small claims court judgment of November 18, 2022 to be void. “A decision that is void ‘has no legal effect at any time and cannot be confirmed or ratified by subsequent action or inaction’ and ‘is subject to a collateral attack.’” *Koonce v. Finney*, 68 N.E.3d 1086, 1090 (Ind. Ct. App. 2017) (quoting *Chapin v. Hulse*, 599 N.E.2d 217, 220 (Ind. Ct. App. 1992), *trans. denied*), *trans. denied*. “An action or judgment which has been declared void is a nullity; it is as if it never existed.” *Carter v. Allen*, 631 N.E.2d 503, 507 (Ind. Ct. App. 1994). “[A]ll subsequent actions predicated on that ruling are tainted by its nullity and are similarly without effect.” *Id.*

work on the bathroom remodel project. On January 3, 2023, Handyman moved to dismiss the Spruchs' Complaint under Indiana Trial Rule 12(B)(6), and advanced that the Spruchs' claims were barred pursuant to the doctrine of claim preclusion because the small claims court had rendered a final judgment on the merits with respect to these same claims between the same parties. The following day, on November 4, 2023, the trial court summarily granted Handyman's motion to dismiss without a hearing and dismissed Spruchs' Complaint.

[14] The standard of review on appeal from a trial court's grant of a motion to dismiss for the failure to state a claim under Indiana Trial Rule 12(B)(6) is *de novo* and requires no deference to the trial court's decision. *Arflack v. Town of Chandler*, 27 N.E.3d 297, 302 (Ind. Ct. App. 2015). The grant or denial of a motion to dismiss turns on the legal sufficiency of the claim and does not require determinations of fact. *Id.* Therefore, a motion to dismiss under Rule 12(B)(6) tests the legal sufficiency of a complaint: that is, whether the allegations in the complaint establish any set of circumstances under which a plaintiff would be entitled to relief. *Id.* Thus, while we do not test the sufficiency of the facts alleged with regard to their adequacy to provide recovery, we do test their sufficiency with regards to whether or not they have stated some factual scenario in which a legally actionable injury has occurred. *Id.* In determining whether any facts will support the claim, we look only to the complaint and may not resort to any other evidence in the record. *Id.*

[15] In its Trial Rule 12(B)(6) motion, Handyman alleged that because the Spruchs raised the same claims before the trial court that had been dismissed with prejudice by the small claims court on November 18, 2022, the Spruchs claims are barred by claim preclusion and cannot provide relief. The doctrine of *res judicata* serves to prevent the litigation of matters that have already been litigated. *TacCo Falcon Point, Inc. v. Atl. Ltd. P'ship XII*, 937 N.E.2d 1212, 1218 (Ind. Ct. App. 2010). *Res judicata* consists of two distinct components: claim preclusion and issue preclusion. *Id.* Claim preclusion is applicable when a final judgment on the merits has been rendered and acts to bar a subsequent action on the same claim between the same parties. *Id.* When claim preclusion applies, all matters that were or might have been litigated are deemed conclusively decided by the judgment in the prior action. *Id.* Claim preclusion applies when the following four factors are present: (1) the former judgment was rendered by a court of competent jurisdiction; (2) the former judgment was rendered on the merits; (3) the matter now at issue was, or could have been, determined in the prior action; and (4) the controversy adjudicated in the former action was between parties to the present suit or their privies. *Id.* “Final judgments dispose of the subject matter of the litigation as to the parties so far as the court in which the action is pending has the power to dispose of it.” *Id.* (citing *Reising v. Guardianship of Reising*, 852 N.E.2d 644, 649 (Ind. Ct. App. 2006)).

[16] Here, the Spruchs’ claims have never been decided on the merits. Rather, the small claims court dismissed their Notice of Claim without prejudice on

November 1, 2022.⁵ Because the Spruchs' cause was dismissed without prejudice, the small claims court Order was not a judgment on the merits. Consequently, we conclude that the Spruchs' Complaint was not barred by the doctrine of claim preclusion. *Zaremba v. Nevarez*, 898 N.E.2d 459, 463 (Ind. Ct. App. 2008); *Wood v. Zeigler Bldg. Materials, Inc.*, 436 N.E.2d 1168, 1170 (Ind. Ct. App. 1982) ("A dismissal without prejudice is not a determination of the merits of a complaint and does not bar a later trial of the issues."); *C.L.B. v. S.T.P.*, 337 N.E.2d 582, 585 (Ind. Ct. App. 1975) ("We are of the opinion that the first petition filed by the petitioner was not *res judicata* as there was no judgment rendered on the merits and there was no adjudication in the former suit. In fact the cause was dismissed *sua sponte* without prejudice by the court.") Thus, we conclude that the trial court abused its discretion by dismissing the Spruchs' Complaint on this basis.

CONCLUSION

[17] Based on the foregoing, we hold that the small claims court erred by granting Handyman's counterclaim for damages on November 1, 2022 and that the trial court abused its discretion by dismissing the Spruchs' Complaint.

[18] Reversed and remanded.

⁵ Because we declared the small claims court's Order issued on November 18, 2022 void, the only small claims court Order upon which the trial court could have based its dismissal is the small claims court's Order of November 1, 2022.

[19] Altice, C. J. and Pyle, J. concur