MEMORANDUM DECISION

ATTORNEY FOR APPELLANTS

Justin R. Wall
Wall Legal Services
Huntington, Indiana

ATTORNEY FOR APPELLEE

Jon J. Olinger
Fort Wayne, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Adoption of L.M. and K.M., Minor Children,

A.O. and J.O.,

Appellants-Petitioners,

v.

D.M.,

Appellee-Respondent.

August 22, 2022

Court of Appeals Case No. 22A-AD-712

Appeal from the Hendricks Superior Court

The Honorable Robert W. Freese, Judge

Trial Court Cause Nos. 32D01-2111-AD-54 32D01-2111-AD-55

Molter, Judge.

[1] A.O. ("Mother") and J.O. ("Stepmother") filed petitions for Stepmother to adopt Mother's children, L.M. and K.M. ("Children"), in the Hendricks Superior Court, asserting that D.M.'s ("Father") consent to Children's adoption

was not required. Father moved to dismiss Mother and Stepmother's petitions under Indiana Trial Rule 12(B)(6) based on the defense of res judicata because he alleges the Huntington Circuit Court previously denied adoption petitions raising the same claims and issues. The Hendricks Superior Court granted Father's motion. However, a trial court may grant a Trial Rule 12(B)(6) motion to dismiss based on an affirmative defense only when the facts establishing the defense are alleged in the complaint or subject to judicial notice. Here, the adoption petitions did not allege facts about the prior petitions that are the basis for Father's res judicata defense, the trial court did not take judicial notice of any facts or materials, and the trial court did not provide any analysis explaining how the order from the Huntington Circuit Court operated to bar the Hendricks Superior Court litigation. It was therefore premature for the trial court to grant Father's motion to dismiss, and we reverse and remand for further proceedings.

Facts and Procedural History

[2] Mother and Father are the biological parents of Children. L.M. was born on December 3, 2017, and K.M. was born on November 18, 2019. After Mother and Father's relationship ended, Mother married Stepmother.

[3] Several months later, Mother and Stepmother ("Petitioners") filed petitions for Stepmother to adopt Children in the Hendricks Superior Court. In response, Father filed a motion to dismiss based on Indiana Trial Rule 12(B)(6), arguing that the Huntington Circuit Court previously denied petitions raising the same

claims and issues. Following a hearing on the motion to dismiss, the Hendricks Superior Court granted the motion. Petitioners now appeal.

Discussion and Decision

[4] Petitioners appeal the Hendricks Superior Court's order granting Father's motion to dismiss pursuant to Indiana Trial Rule 12(B)(6). A motion to dismiss for failure to state a claim tests the legal sufficiency of the claim, not the facts supporting it. *Charter One Mortg. Corp. v. Condra*, 865 N.E.2d 602, 604 (Ind. 2007). Accordingly, our review of a trial court's grant of a Trial Rule 12(B)(6) motion is de novo. *Id.*

[5] When reviewing a motion to dismiss, we view the pleadings in the light most favorable to the nonmoving party, with every reasonable inference construed in the nonmovant's favor. *Id.* A pleading may not be dismissed for failure to state a claim upon which relief can be granted unless it is clear on its face that the claimant is not entitled to relief. *Id.* at 605. While we may not look beyond the pleading when evaluating a motion to dismiss, "materials of which a trial court may take judicial notice . . . are not considered matters outside the pleading." *Moss v. Horizon Bank, N.A.*, 120 N.E.3d 560, 563 (Ind. Ct. App. 2019) (quotations omitted).

[6] Although a Rule 12(B)(6) motion to dismiss tests only the legal sufficiency of a pleading, the trial court's order does not identify any legal basis for dismissing Petitioners' adoption petitions. Father contends we should nevertheless affirm on the basis that the petitions were barred by the doctrine of res judicata

because he alleges the Huntington Circuit Court previously denied adoption petitions raising the same claims and issues. "Generally speaking, res judicata operates to prevent repetitious litigation of disputes that are essentially the same, by holding a prior final judgment binding against both the original parties and their privies." *Matter of Eq.W.*, 124 N.E.3d 1201, 1208–09 (Ind. 2019) (quotations omitted). The doctrine applies "where there has been a final adjudication on the merits of the same issue between the same parties." *Id.* (quotations omitted).

[7] There are two branches of res judicata—claim preclusion and issue preclusion—and Father contends both apply to bar Petitioners' claims. "Claim preclusion applies where a final judgment on the merits has been rendered and acts as a complete bar to a subsequent action on the same issue or claim between those parties and their privies." *Indianapolis Downs, LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. Ct. App. 2005), *trans. denied*. "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.* Four elements are required to establish claim preclusion:

> (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 the parties to the present suit or their privies.

Id.

[8] 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." *Id.* at 704. Where issue preclusion applies, "the former adjudication will be conclusive in the subsequent action even if the two actions are on different claims." *Id.* "However, the former adjudication will only be conclusive as to those issues that were actually litigated and determined therein." *Id.* Issue preclusion "does not extend to matters that were not expressly adjudicated and can be inferred only by argument. *Id.* To determine whether issue preclusion applies, "the trial 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 collateral estoppel given the facts of the particular case." *Id.* at 705.

[9] We cannot affirm on the basis of res judicata. To begin with, the litigation in the Huntington Circuit Court is not properly before us. The trial court's order in this Hendricks Superior Court litigation contains references to the Huntington Circuit Court litigation, but the trial court here never took judicial notice of any judgment or other materials from that litigation, and materials from that case never were made part of the record on appeal. While the trial court's order states that the court received testimony and heard evidence, Appellant's App. Vol. 2 at 28, the only hearing in this case was telephonic and

only included arguments of counsel. No testimony was taken, and no evidence was introduced.[1] The adoption petitions at issue here also do not refer to that litigation. Father has not asked us to take judicial notice of materials from prior litigation, and he has not opposed Petitioners' motion to strike his appendix containing materials from the Huntington Circuit Court.

[10] Moreover, while Father alleges the Huntington Circuit Court rejected Petitioners' July 30, 2020 claim that he abandoned his children as of that date, he does not provide any legal support for the proposition that this prior determination precludes a finding that he *subsequently* abandoned his children when Petitioners filed their petitions sixteen months later. That is not to say Father will be unable to prevail on his res judicata defense, but this illustrates why it was premature to grant his motion to dismiss without taking judicial notice of the previous litigation and without any legal analysis of the res judicata defense.

[11] Because we cannot affirm on the basis of res judicata at this juncture, and Father does not provide any other basis on which to affirm, we reverse the trial court's order dismissing the adoption petitions and remand for further proceedings.[2]

---

[1] Had the court relied on testimony and evidence which went beyond facts subject to judicial notice, the court would have been required to convert the motion to a summary judgment motion. T.R. 12(B).

[2] The trial court also adopted Father's proposed finding that "[t]he second filing of the same adoption petition was frivolous, unreasonable, and groundless," and the court awarded Father $1,500 in attorney fees.

[12] Reversed and remanded.

Mathias, J., and Brown, J., concur.

Appellant's App. Vol. 2 at 30. Because we conclude it was premature for the trial court to determine whether the petitions at issue here are barred by res judicata, we also vacate that portion of the order without expressing any opinion as to whether this action is frivolous and merits an attorney fee award, which is an issue the trial court maintains discretion to address when the issue is ripe.