

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MARIO THOMAS MENDONCA,
Appellant,
vs.
RACHEL MENDONCA,
Respondent.

No. 82311-COA

FILED

JUL 16 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Mario Thomas Mendonca appeals from a district court order dismissing a child custody case. Second Judicial District Court, Family Court Division, Washoe County; Bridget E. Robb, Judge.

Mario and respondent Rachel Mendonca have one minor child. In a separate proceeding below, the district court entered a decree of divorce and awarded full custody to Rachel. In that case, Mario filed a motion seeking modification of the court's custody determination. This motion was denied by the district court, and Mario failed to appeal from the denial of his motion to modify custody.¹ Thereafter, Mario filed the instant "Petition to Establish Custody and Visitation," as a separate district court case, seeking the same relief as his motion to modify custody. Shortly after Mario filed the instant petition, the district court entered an order dismissing it because the district court had previously resolved the same issue in the divorce case in denying the motion to modify custody. Mario now appeals.

¹The parties do not dispute that this decision from the divorce proceedings fully and finally resolved Mario's request to modify custody.

After a review of the briefs and the record on appeal, we conclude that the district court appropriately dismissed Mendonca's petition. In the underlying case, the district court determined that the child custody disputes presented in Mendonca's petition had already been resolved in the parties' divorce action. And on appeal, Mario appears to challenge the district court's actions and determinations in the divorce case. But to the extent that Mario attempts to challenge the district court's decisions in that case, the appropriate challenge to those orders would have been through a separate appeal. And because he failed to do so, any such challenges are now waived. *See Powell v. Liberty Mut. Fire Ins. Co.*, 127 Nev. 156, 161 n.3, 252 P.3d 668, 672 n.3 (2011) (providing that issues not raised on appeal are deemed waived).

Although the district court did not expressly address the doctrine of claim preclusion in its order, it nevertheless appears to have applied preclusion principles in dismissing this matter based on the fact that the court had previously resolved the issues raised in this petition in denying Mario's motion to modify custody filed in the parties' divorce case. Claim preclusion applies when: "(1) there has been a valid, final judgment in a previous action; (2) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first action; and (3) the parties or their privies are the same in the instant lawsuit as they were in the previous lawsuit" *Weddell v. Sharp*, 131 Nev. 233, 235, 350 P.3d 80, 81 (2015). This court applies a de novo standard of review to matters concerning claim preclusion. *Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. 252, 256, 321 P.3d 912, 914 (2014).

On appeal, Mario fails to challenge the district court's determination that the matters presented in his petition had already been

resolved in the earlier divorce case. Moreover, it is undisputed that the orders entered in the divorce action were valid judgments and that the parties are the same as they were in the divorce proceeding. As a result, we conclude that all three factors of the claim preclusion test were met. Therefore, we cannot say the district court erred in dismissing Mario's petition as the doctrine of claim preclusion applies to bar his petition.² See *Weddell*, 131 Nev. at 235, 350 P.3d at 81; *Alcantara*, 130 Nev. at 256, 321 P.3d at 914; see also *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (recognizing that appellate courts may affirm a district court decision on different grounds than those provided by the district court).

Accordingly, we

ORDER the judgment of the district court AFFIRMED.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

²Nevertheless, as noted in the district court's order dismissing the underlying case, nothing prohibits Mendonca from pursuing a modification of the custody order in the original divorce case.

³Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Bridget E. Robb, District Judge, Family Court Division
Mario Thomas Mendonca
Rachel Mendonca
Washoe District Court Clerk