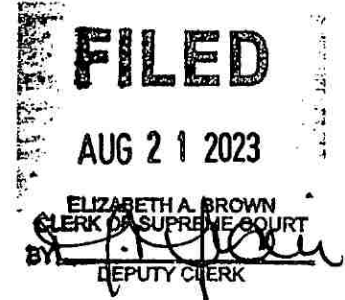


IN THE SUPREME COURT OF THE STATE OF NEVADA

SANDRA ALTHAUS,
Appellant,
vs.
ANN O. HALL, AN INDIVIDUAL; AND
BOWEN HALL CHARTERED, A
DOMESTIC CORPORATION,
Respondents.

No. 85032



ORDER OF AFFIRMANCE

This is an appeal from a final judgment in a legal malpractice action. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

Appellant Sandra Althaus hired attorney Ann Hall of Bowen Hall Chartered to initiate a lawsuit. Respondent Hall filed suit against Althaus's former financial advisors, principally Carrie McAninch. After the lawsuit settled, Hall prepared a settlement agreement and a confession of judgment. Both the settlement agreement and confession of judgment provided that Althaus's claims would not be dischargeable in bankruptcy. A few months after signing the settlement agreement, McAninch filed for bankruptcy. Despite the settlement agreement, the bankruptcy court discharged McAninch's debt to Althaus. The bankruptcy court decision did not apply to any of Althaus's other financial advisors.

Althaus sued Hall and her firm for legal malpractice and breach of contract. Althaus alleged Hall should have drafted the settlement agreement and confession of judgment to avoid the bankruptcy discharge. Hall filed a motion for summary judgment asserting issue preclusion. Hall argued that the bankruptcy court already addressed the issues raised by Althaus and rendered a final judgment. The district court granted

summary judgment in favor of respondents. Althaus appeals, arguing the district court applied the wrong legal standards for proximate cause and issue preclusion. Althaus also argues the district court ignored the impact of the bankruptcy court's failure to consider her claims of breach of fiduciary duty, conversion, and conspiracy. Last, Althaus argues the district court failed to consider Althaus's alternative theory of legal malpractice.

DISCUSSION

This court reviews a district court order granting "summary judgment de novo, without deference to the findings of the lower court." *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). A district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." NRCPC 56(a).

First, the district court applied the appropriate but-for causation test to the proximate cause element of Althaus's legal malpractice claim. In negligence cases, but-for causation "applies when each party argued its own theory of causation, the two theories were presented as mutually exclusive, and the cause of the plaintiff's injuries could only be the result of one of those theories." *Wyeth v. Rowatt*, 126 Nev. 446, 464, 244 P.3d 765, 778 (2010).

Here, Althaus claimed that Hall's negligent drafting of the settlement agreement caused the discharge of the debt that Althaus owned. Althaus does not assert another cause for her claimed injury outside of legal malpractice. This fact pattern fits squarely into a but-for causation analysis. The district court reasoned that to establish proximate cause for her breach of contract and legal malpractice claims, "Althaus must show that had she not entered into the Settlement Agreement, that she would have succeeded in her original claim of fraud." This test reflects but-for

causation. The district court therefore applied the appropriate standard for proximate cause to Althaus's legal malpractice claim.

Second, the district court applied the incorrect standard for issue preclusion to Althaus's claims; however, the district court reached the correct result because the issues were also precluded under the correct standard.

Issue preclusion prevents a party from raising specific "issues that were actually and necessarily litigated and on which there was a final decision on the merits." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008), *holding modified on other grounds by Weddell v. Sharp*, 131 Nev. 233, 350 P.3d 80 (2015). In Nevada, an issue is precluded if

- (1) the issue decided in the prior litigation must be identical to the issue presented in the current action;
- (2) the initial ruling must have been on the merits and have become final; . . .
- (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and
- (4) the issue was actually and necessarily litigated.

Id. (omission in original) (footnote and internal quotation marks omitted).

The district court erroneously applied Nevada's issue preclusion standard to the bankruptcy court decision. Nevada courts "apply federal law in determining whether a prior federal court determination should be given preclusive effect" in federal-question cases. *Garcia v. Prudential Ins. Co. of Am.*, 129 Nev. 15, 17, 293 P.3d 869, 870 (2013). Because the bankruptcy court decision is a prior federal court determination, the district court should have applied federal law to determine whether the bankruptcy case had issue preclusive effect on

Althaus's state claims. Therefore, the district court erred by applying Nevada's issue preclusion standard rather than the federal standard.

Even though the incorrect standard was applied, the court reached the correct result. "This court will affirm a district court's order if [it] reached the correct result, even if for the wrong reason." *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010). Althaus's issues are precluded under the federal issue preclusion standard. Under the federal standard,

a party must demonstrate that the issue he seeks to preclude is (1) "identical to the one alleged in the prior litigation," (2) has "been actually litigated in the prior litigation," and (3) that the resolution of the issue was "a critical and necessary part" of the earlier judgment.

Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 480, 215 P.3d 709, 717 (2009) (quoting *Clark v. Bear Stearns & Co., Inc.*, 966 F.2d 1318, 1320 (9th Cir. 1992)), *holding modified by Garcia*, 129 Nev. 15, 293 P.3d 869.

While the claims differ, the issues central to Althaus's malpractice claim are identical to those litigated in bankruptcy court. The bankruptcy court discharged the debt McAninch owed Althaus after finding Althaus failed to establish misrepresentation, fraudulent action, or fraudulent omission by McAninch under 11 U.S.C. § 523(a)(2)(A) (2018). Althaus's legal malpractice suit was premised on the theory that Hall should have included facts in the settlement documents demonstrating misrepresentation, fraudulent action, or fraudulent omission by McAninch sufficient to overcome dischargeability under 11 U.S.C. § 523(a)(2)(A).

Althaus does not dispute the remaining elements of issue preclusion under either standard. We nevertheless determine on de novo review that the remaining two elements are met. The claims were litigated

in bankruptcy court. The dischargeability issues were litigated in a four-day bench trial in bankruptcy court. Additionally, the resolution of the dischargeability issue was critical and necessary to the bankruptcy court determination.

The district court erroneously applied Nevada's standard for issue preclusion to a federal court's determination on a federal question; however, Althaus's issues were precluded under either standard. As a result, we affirm this portion of the district court's order.

Althaus also argues that other claims—breach of fiduciary duty, conspiracy, and conversion—were not considered by the bankruptcy court for various reasons. The record demonstrates that the bankruptcy court did consider the breach of fiduciary duty claim. Althaus also had raised the conspiracy and conversion claims, but voluntarily withdrew those claims before the bankruptcy court. Regardless, issue preclusion still applies here.


The complaint filed in this case alleged a claim of legal malpractice and a claim of breach of contract sounding in legal malpractice. Althaus's malpractice claim rests on whether a different legal approach would have prevented the judgment against McAninch from being discharged in bankruptcy—either that the settlement documents should have included language establishing fraud or that Hall should have recommended Althaus go to trial. Regardless of the approach, the outcome would have been the same. The determination made by the bankruptcy court that Althaus failed to establish fraudulent or willful conduct necessarily precludes Althaus from establishing proximate cause to support a claim of legal malpractice.

Althaus also asserts the district court failed to consider her alternate theory of malpractice. The record, however, shows that the district court addressed Althaus's alternate theory. Althaus asserted that in addition to failing to properly draft the settlement documents, Hall committed legal malpractice by failing to inform Althaus that the settlement could be dischargeable in bankruptcy. The district court acknowledged that "Althaus asserts that had she known that the debt was dischargeable in bankruptcy she would not have entered into the Settlement Agreement and would likely have won the underlying fraud claim if tried to a jury." The district court found that "[t]he outcome for Althaus would have been the same regardless of whether she entered into the Settlement Agreement" because either way, the bankruptcy court found no fraud. The district court therefore did not fail to address this theory and as explained above, the determination of the bankruptcy court precluded Althaus from pursuing the malpractice claim against Hall. For the reasons above, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Bell

cc: Hon. Connie J. Steinheimer, District Judge
Laurie A. Yott, Settlement Judge
Jeffrey A. Dickerson
Laxalt Law Group, Ltd./Reno
Washoe District Court Clerk