

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

NONA TOBIN, an individual,

Appellant,

vs.

BRIAN CHIESI, an individual,
DEBORA CHIESI, an individual,
QUICKEN LOANS INC.; JOEL A.
STOKES, an individual, JOEL A.
STOKES and SANDRA F. STOKES, as
Trustees of the JIMIACK
IRREVOCABLE TRUST; JIMIACK
IRREVOCABLE TRUST; RED ROCK
FINANCIAL SERVICES; and
NATIONSTAR MORTGAGE, LLC

Respondents.

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Supreme Court No. 82294

District Ct. No. A799890

APPEAL FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE SUSAN JOHNSON PRESIDING

**RESPONDENTS BRIAN CHIESI, DEBORA CHIESI, AND QUICKEN
LOANS INC.'S ANSWERING BRIEF**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Parent corporations of Quicken Loans Inc.: None.
2. Publicly held companies that own ten percent or more of Quicken Loans Inc.: None
3. All law firms whose partners or associates have appeared or are expected to appear in this Court on behalf of Brian Chiesi, Debora Chiesi, and Quicken Loans Inc.: MAURICE WOOD.

MAURICE WOOD

/s/ Brittany Wood

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSUREi

TABLE OF CONTENTS ii

TABLE OF AUTHORITIESiv

I. ISSUES ON APPEAL1

1. Whether the district court properly found that Tobin’s claims to quiet title to the Property are barred by issue and claim preclusion where it is undisputed that Tobin participated in the prior Quiet Title Litigation in her capacity as trustee of the Hansen Trust?

2. Whether the district court properly found that Tobin’s claims to quiet title to the Property are barred by issue and claim preclusion where it is undisputed that Tobin acquired her purported interest in the Property by Quitclaim Deed from the Hansen Trust while the Quiet Title Litigation was pending?

3. Whether the district court abused its discretion in awarding the Chiesi Respondents their attorney’s fees and costs after finding that Tobin’s Amended Complaint was brought without reasonable grounds?

II. STATEMENT OF FACTS1

A. Tobin was actively involved in the Quiet Title Litigation and is in privity with the Hansen Trust1

B. The Chiesis are in privity with Jimijack.....6

C. Instead of seeking a stay pending appeal, Tobin filed this new action, attempting to relitigate the claims resolved by the Quiet Title Order 7	
D. The district court property found that Tobin's Amended Complaint is barred by issue and claim preclusion.	7
E. The district court did not abuse its discretion in awarding the Chiesi Respondents their attorney's fees and costs.	9
III. SUMMARY OF ARGUMENT.....	11
IV. ARGUMENT.....	15
A. The district court correctly found that Tobin's Amended Complaint is barred by issue and claim preclusion	15
1. The parties or their privies are the same	17
2. The final judgment is valid and was actually litigated.....	19
3. The subsequent action is based on the same claims.....	20
B. The district court did not abuse its discretion in awarding the Chiesi Respondents their attorney's fees and costs incurred in defense of Tobin's frivolous claims	22
1. Tobin's claims were brought without reasonable grounds	22
2. Tobin waived her objection to the cost award.....	24
3. The district court properly applied the <i>Brunzell</i> factors to award the Chiesi Respondents attorney's fees	25
V. CONCLUSION	26
NRAP 28.2 ATTORNEY CERTIFICATE.....	28
CERTIFICATE OF SERVICE	30

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<u>Bergman v. Boyce</u> , 109 Nev. 670, 856 P.2d 560 (Nev. 1993)	23
<u>Bower v. Harrah's Laughlin, Inc.</u> , 125 Nev. 470, 215 P.3d 709 (Nev. 2009).in passim	
<u>Brunzell v. Golden Gate Nat'l Bank</u> , 85 Nev. 345, 455 P.2d 31 (Nev. 1969). .11, 26	
<u>Clark v. Clark</u> , 80 Nev. 52, 389 P.2d 69 (Nev. 1964)	20
<u>Edwards v. Ghandour</u> , 123 Nev. 105, 159 P.3d 1086 (Nev. 2007)	19
<u>Five Star Capital Corp. v. Ruby</u> , 124 Nev. 1048, 194 P.3d 709 (Nev. 2008) ..	15, 16
<u>G.C. Wallace v. Eight Judicial Dist. Ct.</u> , 127 Nev. 701, 262 P.3d 1135 (Nev. 2011)	16
<u>LaForge v. State, University System</u> , 116 Nev. 415, 997 P.2d 130 (Nev. 2000). .	20
<u>Old Aztec Mine, Inc. v. Brown</u> , 97 Nev. 49, 623 P.2d 981 (Nev. 1981).	13, 24
<u>Red Rock Financial Services, LLC vs. Tobin et al.</u> , Case No. A-21-828840-C	13, 24
<u>Snow v. Pioneer Title Ins. Co.</u> , 84 Nev. 480, 444 P.2d 125 (Nev. 1968) . . .	4, 14, 18
<u>Tobin v. Stokes</u> , 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021)	in passim
 <u>Statutes</u>	
NRS 18.010(2)(b)	in passim
 <u>Rules</u>	
Nevada Rule of Professional Responsibility 1.1	25
 <u>Miscellaneous</u>	
<u>Restatement (Second) of Judgments</u> , § 41(1)(a)	13, 18

I. ISSUES ON APPEAL

1. Whether the district court properly found that Tobin's claims to quiet title to the Property are barred by issue and claim preclusion where it is undisputed that Tobin participated in the prior Quiet Title Litigation in her capacity as trustee of the Hansen Trust?
2. Whether the district court properly found that Tobin's claims to quiet title to the Property are barred by issue and claim preclusion where it is undisputed that Tobin acquired her purported interest in the Property by Quitclaim Deed from the Hansen Trust while the Quiet Title Litigation was pending?
3. Whether the district court abused its discretion in awarding the Chiesi Respondents their attorney's fees and costs after finding that Tobin's Amended Complaint was brought without reasonable grounds?

II. STATEMENT OF FACTS

A. Tobin was actively involved in the Quiet Title Litigation and is in privity with the Hansen Trust.

In 2003, Gordon B. Hansen and Marilyn Hansen purchased 2763 White Sage Drive, Henderson, Nevada 89052 ("Property") for \$388,311. 19 AA 3819-22. On June 11, 2004, Marilyn Hansen transferred her interest in the Property to Gordon Hansen. 19 AA 3824-27.

On July 22, 2004, Gordon Hansen obtained a loan secured by the Property. 16 AA 3239-3256 at ¶13(b).

On August 27, 2008, Gordon Hansen transferred the Property to the Gordon B. Hansen Trust (“Hansen Trust”). See 19 AA 3829-32.

In 2012, Mr. Hansen died. At the time of Mr. Hansen’s death, two loans secured by the Property had balances in excess of the Property’s fair market value (the first loan had an outstanding balance of \$389,000 and the second loan had an outstanding balance of \$15,000). 16 AA 3239-3256 at ¶13(a)-(b).

In 2012, the Hansen Trust defaulted on the HOA assessments for the Property. 19 AA 3834-43 (Finding of Fact No. 4).

On October 3, 2012, Appellant Nona Tobin (“Tobin”) sent a letter to the HOA informing the HOA that Gordon Hansen passed away (“Tobin Letter”). Id. at (Finding of Fact No. 7). The Tobin Letter acknowledged that the HOA assessments were delinquent and advised the HOA that Tobin was attempting to short sell the Property. Id. The Tobin Letter also advised the HOA that no further assessments would be paid during the short sale process. Id. at (Finding of Fact No. 9). No further HOA assessments were paid after the Tobin Letter. Id. at (Finding of Fact No. 10). The HOA thereafter properly followed all processes and procedures in foreclosing upon the Property in accordance with NRS Chapter 116 (“HOA Foreclosure”). Id. at (Conclusion of Law No. 11).

The HOA Foreclosure took place on August 15, 2014, whereby the HOA, through its agent Red Rock, sold the Property to Thomas Lucas representing Opportunity Homes, LLC. Id. at (Finding of Fact No. 30).

On August 22, 2014, a foreclosure deed was recorded transferring title to the Property to Opportunity Homes, LLC. 19 AA 3845-47.

On June 9, 2015, Opportunity Homes, LLC transferred its interest in the Property to F. Bondurant, LLC. 19 AA 3849-51.

On June 9, 2015, F. Bondurant, LLC transferred its interest in the Property to Joel A. Stokes and Sandra F. Stokes, as Trustees of the Jimijack Irrevocable Trust (“Jimijack”). 19 AA 3853-55. On June 16, 2015, Jimijack initiated a quiet title action in the Eighth Judicial Court as Case Number A-15-720032-C (the “Quiet Title Litigation”). 21 AA 4382 at Finding of Fact No. 1.

On November 15, 2016, Tobin, in her capacity as Trustee of the Hansen Trust, filed a Motion to Intervene in the Quiet Title Litigation. 19 AA 3857-3974. On January 11, 2017, the Order Granting Tobin’s Motion to Intervene was entered in the Quiet Title Litigation. 19 AA 3976-78.

On January 31, 2017, Tobin, in her capacity as Trustee of the Hansen Trust, filed a document entitled “Nona Tobin’s Crossclaim for Quiet Title Against Sun City Anthem Community Association, Inc.” 19 AA 3980-4001; 20 AA 4002-75.

On February 1, 2017, Tobin, in her capacity as Trustee of the Hansen Trust, filed a document entitled “Nona Tobin’s Answer to Plaintiff’s Complaint and Counterclaim”. 20 AA 4077-4114.

On February 1, 2017, Tobin, in her capacity as Trustee of the Hansen Trust, filed a document entitled “Nona Tobin’s Crossclaim Against Thomas Lucas d/b/a Opportunity Homes, LLC”. 20 AA 4116-4174.

Despite the fact that the valid HOA Foreclosure had extinguished the Hansen Trust’s interest in the Property, on March 28, 2017, Tobin, in her capacity as the trustee of the Hansen Trust, recorded a wild deed, purporting to transfer the Property to Tobin, in her individual capacity, by Quitclaim Deed. 20 AA 4176-79. The Quitclaim Deed to Tobin constitutes a “wild” deed (i.e., a deed outside the chain of title (see Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 444 P.2d 125 (Nev. 1968))), as, at the time the Quitclaim Deed was recorded, the Hansen Trust’s interest in the Property had already been extinguished pursuant to the valid HOA Foreclosure conducted nearly three years earlier. 19 AA 3834-43 (Conclusion of Law No. 11).

On April 17, 2019, the district court in the Quiet Title Litigation entered its Findings of Fact, Conclusions of Law and Order on Cross-Defendant Sun City Anthem Community Association’s (“HOA”) Motion to Summary Judgment (“Quiet Title Order”). 19 AA 3834-43 The Quiet Title Order includes detailed factual findings with regard to the HOA Foreclosure. The district court found:

HOA has met its burden in establishing that there is no genuine issue of material fact and that it is entitled to summary judgment. Tobin has failed to meet her burden in opposing the Motion . . . The totality of the facts evidence that the HOA properly followed the processes and procedures in foreclosing upon the Property.

19 AA 3834-43 at (Conclusion of Law No. 11).

The district court thereafter conducted a bench trial to resolve the only remaining claims in the Quiet Title Litigation – the Counterclaims asserted by the Hansen Trust against Jimijack in its Answer and Counterclaim. 20 AA4180-97, n.1. Following the bench trial, the district court entered judgment in favor of Jimijack, finding that issue and claim preclusion, and the doctrine of the law of the case precluded all claims against Jimijack as each claim was contingent upon a finding that the HOA Foreclosure was void. See id. at Conclusion of Law Nos. 1-4. Because the district court had already determined in its Quiet Title Order that the HOA Foreclosure followed the processes and procedures of NRS Chapter 116, the court found that none of the remaining claims could stand against Jimijack as Jimijack acquired title to the Property through the purchaser at the valid HOA Foreclosure. In addition, the court found that even if the claims were not barred by issue and claim preclusion, the Counterclaims failed based on Tobin’s own trial testimony in which she acknowledged the house had been subject to multiple short sales, the Trust was in default with the lender and the HOA, and Tobin had received the Notice of Foreclosure Sale. Id. at Conclusion of Law No. 5.

On July 24, 2019, the final judgment in the Quiet Title Litigation was recorded in the Official Records of Clark County, Nevada. Id.

A timely appeal of the final judgment in the Quiet Title Litigation was filed. In a detailed opinion, the Nevada Court of Appeals affirmed the district court judgment in the Quiet Title Litigation, finding that the HOA Foreclosure was valid because the Hansen Trust was continuously in default on obligations that were properly included in the HOA's lien from the date the underlying notice of delinquent assessment lien was recorded to the date of the foreclosure sale. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021).

B. The Chiesis are in privity with Jimijack

On May 1, 2019, Joel A. Stokes and Sandra F. Stokes, as Trustees of the Jimijack Irrevocable Trust, transferred the Property to Joel A. Stokes. 20 AA4199-4201.

Following entry of the district court judgment in the Quiet Title Litigation, on December 27, 2019, Joel Stokes sold the Property to Brian Chiesi and Debora Chiesi (the "Chiesis") for \$505,000. 20 AA4303-06. To finance their purchase of the Property, the Chiesis obtained a \$353,500 loan from Quicken Loans, Inc. (collectively with the Chiesis, "the Chiesi Respondents"). 20 AA 4208-32.

Having acquired their interest in the Property from Joel Stokes, the Chiesi are in privity with a party to the Quiet Title Litigation. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009)(A person is in privity with another if the person acquired an interest in the subject matter affected by the judgment through one of the parties such as by inheritance, succession, or purchase).

C. Instead of seeking a stay pending appeal, Tobin filed this new action, attempting to relitigate the claims resolved by the Quiet Title Order.

On June 3, 2020 – while the appeal of the Quiet Title Litigation was still pending – Tobin filed her Amended Complaint in this action. 16 AA 3239-56. Each of Tobin’s three claims for relief seek to obtain title to the Property. Id. at ¶106 (the “Property should be quieted in Tobin’s name”); ¶111 (the “Property should be held in constructive trust for Tobin”); ¶ 116 (“Tobin seeks a declaration from the Court that the transfers of ownership and encumbrances after the transfer from the [Hansen] Trust to the present title are void and unenforceable.”).

Tobin’s Amended Complaint did not allege – nor is there any evidence to suggest – that the Chiesis’ purchase of the Property was not at arm’s length, for fair market value. The Chiesis purchased the Property (and in the case of the lender, lent money secured by the Property) in good faith, for valuable consideration.

D. The district court properly found that Tobin’s Amended Complaint is barred by issue and claim preclusion.

On June 23, 2020, Red Rock Financial Services (“Red Rock”) filed a Motion

to Dismiss Tobin's Amended Complaint, demonstrating that Tobin's Amended Complaint is barred by issue and claim preclusion as a result of the prior Quiet Title Litigation. 16 AA 3257-3357.

On July 6, 2021, the Chiesi Respondents filed a Joinder to Red Rock's Motion (19 AA 3801-12) and a Request for Judicial Notice (19 AA 3813-4001; 20 AA 4002-4241). The Chiesi Respondents' Joinder included a detailed factual section, outlining how Tobin is in privity with the Hansen Trust and how the Chiesi Respondents are in privity with Jimijack. 19 AA 3801-12.

On July 20, 2021, Tobin filed an Opposition to the Motion to Dismiss and Joinders Thereto. 21 AA 4255-4343. Ignoring that fact that issue and claim preclusion apply to a party, *and their privies*, Tobin's Opposition asserted that because "the parties are not the same" as the parties involved in the Quiet Title Litigation, issue and claim preclusion would not preclude Tobin from having the district court reconsider the title dispute that was previously resolved in the Quiet Title Litigation. Id.

On August 3, 2021, the Chiesi Respondents filed their Reply to Tobin's Opposition, noting that Tobin's Opposition completely ignored the fact that Tobin is in privity with the Hansen Trust and that the Chiesi Respondents are in privity with Jimijack. 21 AA 4344-50.

On August 11, 2021, the district court heard oral argument on the Motion to Dismiss. 21 AA 4368-80. The district court found that Tobin's claims were barred by issue and claim preclusion as Tobin already had an opportunity to assert her claims as trustee of the Hansen Trust. 21 AA 4379. The court directed counsel to prepare an order and circulate it to all counsel for approval. Id.

On December 3, 2020, the district court entered its written Order Granting Defendant Red Rock Financial Services' Motion to Dismiss Complaint and All Joinders to the Motion. 22 AA 4486-4510.

On December 29, 2020, Tobin filed a timely Notice of Appeal with respect to the district court's final judgment. 22 AA 4556-57.

E. The district court did not abuse its discretion in awarding the Chiesi Respondents their attorney's fees and costs.

On September 16, 2020, the Chiesi Respondents filed a Motion for Attorney's Fees and Costs, seeking an award of attorney's fees and costs pursuant to NRS 18.010(2)(b). 21 AA 4389-4407. As shown by the redacted billing entries in support of the Motion, the majority of time was devoted to reviewing the voluminous docket from the Quiet Title Litigation, drafting a Motion to Dismiss before the Red Rock Motion was filed (21 AA 4398 showing billing entries that predate Red Rock's filing), drafting a Request for Judicial Notice, and drafting a Reply in Support of the Motion to Dismiss. 21 AA 4398-4404.

On October 8, 2020, Tobin filed an Opposition to the Chiesi Defendant's Motion for Attorney's Fees and Costs. 21 AA 4408-33. Tobin's Opposition dedicated multiple pages arguing that Tobin, as an individual, was justified in filing this action. Id. In addition, Tobin argued that the fees were unreasonable, asserting that the Chiesis' counsel – retained to defend the Chiesis' \$505,000 purchase of the Property – should have filed a “simple one-paragraph joinder” to Red Rock's Motion to Dismiss.

On October 19, 2020, the Chiesi Respondents filed a Reply in Support of their Motion for Attorney's Fees and Costs, noting that Tobin's Opposition suffered the same fatal flaw as her Opposition to the Motion to Dismiss – it completely ignored the issue of privity. 21 AA 4434-40. The Reply asserted that the arguments advanced in Tobin's Opposition highlighted why the Chiesi Respondents had devoted significant time and attention in their prior briefing addressing the privity issue rather than relying on a “a simple one-paragraph joinder” to Red Rock's Motion (as Tobin's Opposition asserted was proper). Id. Finally, the Reply noted that the other parties and their counsel participated in the Quiet Title Litigation whereas the Chiesis – and their counsel – had not participated in the Quiet Title Litigation. Id. For that reason, the Chiesis Respondents' counsel was required to devote time analyzing the substantial docket from the Quiet Title Litigation to get up to speed with the other counsel involved in this case. Id.

On October 29, 2020, this district court heard oral argument on the Chiesi Respondents' Motion for Attorney's Fees and Costs. 21 AA 4451-57. The district court found that Tobin's Amended Complaint was filed without reasonable grounds; therefore, an award of attorney's fees and costs was appropriate.

On November 17, 2020, the district court entered its written Order Granting Motion for Attorney's Fees and Costs. 22 AA 4467-74. The court found that this action was a multiplication of the Quiet Title Litigation, precluded by issue and claim preclusion, and thus, was brought without reasonable ground such that an award of attorney's fees and costs pursuant to NRS 18.010(2)(b) was proper. *Id.* After analyzing the Brunzell factors, the district court awarded the Chiesi Respondents \$8,640.00 in attorney's fees and \$308.99 in costs. *Id.*

III. SUMMARY OF ARGUMENT

Tobin, both in her individual capacity and in her capacity as trustee of the Hansen Trust, has been attempting to set aside the August 15, 2014 HOA Foreclosure of the Property for *years*. Specifically, on January 31, 2017, and February 1, 2017, Tobin, in her capacity as Trustee of the Hansen Trust, filed three pleadings in Quiet Title Litigation: (1) "Nona Tobin's Crossclaim for Quiet Title Against Sun City Anthem Community Association, Inc."; (2) "Nona Tobin's Answer to Plaintiff's Complaint and Counterclaim"; and (3) "Nona Tobin's Crossclaim Against Thomas Lucas d/b/a Opportunity Homes, LLC" (collectively,

“Tobin’s Quiet Title Claims”). In the Quiet Title Litigation, like here, Tobin asserted that the HOA Foreclosure was void and that various parties were allegedly unjustly enriched by the HOA Foreclosure.

The district court in the Quiet Title Litigation determined that the HOA properly followed the processes and procedures of NRS Chapter 116 for the HOA Foreclosure. As to the Hansen Trust’s counterclaim, following a bench trial, the district court entered judgment in favor of Jimijack finding that the counterclaims failed based on Tobin’s own trial testimony in which she acknowledged the house had been subject to multiple short sales, the Trust was in default with the lender and the HOA, and Tobin had received the Notice of Foreclosure Sale. The Orders entered by the district court in the Quiet Title Litigation constituted a final judgment.

The final judgment in the Quiet Title Litigation was appealed. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021). Rather than seeking a stay of the judgment pending appeal, Tobin filed this new action, asserting the same claims that were previously rejected by district court’s final judgment in the Quiet Title Litigation. During the time in which this action was pending, the Nevada Court of Appeals affirmed the district court’s judgment in the Quiet Title Litigation. Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021)

(unpublished Order affirming final district court judgment in the Quiet Title Litigation).

Despite the Nevada Court of Appeals' clear and unequivocal opinion affirming the district court's finding that the HOA properly followed the processes and procedures of NRS Chapter 116 for the HOA Foreclosure, Tobin's Appeal in this action argues that Tobin should nonetheless be allowed to relitigate that finding simply because Red Rock was not a party to the Quiet Title Litigation and Tobin was not allowed to participate in the Quiet Title Litigation in her *individual* capacity. As will be demonstrated below, Tobin's Appeal advances a position that would have this Court ignore binding Nevada Supreme Court precedent and completely re-write the doctrines of issue and claim preclusion.¹

Here, there can be no question that Tobin, in her individual capacity, is in privity with the Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009)(A person is in privity with another if the person

¹ Tobin's Opening Brief improperly raises new arguments for the first time on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (Nev. 1981). Specifically, it appears Tobin is abandoning her claim to obtain title to the Property and instead wishes to assert a claim to the excess proceeds from the HOA Foreclosure. Yet, Tobin would not be entitled to the excess proceeds as it is undisputed that the two loans secured by the Property had balances in excess of the Property's fair market value at the time of the HOA Foreclosure Sale. 16 AA 3239-3256 at ¶13(a)-(b). Any excess proceeds would go to junior lienholders. Regardless, a separate interpleader action is proceeding with respect to the excess proceeds. See Red Rock Financial Services, LLC vs. Tobin et al., Case No. A-21-828840-C.

acquired an interest in the subject matter affected by the judgment through one of the parties such as by inheritance, succession, or purchase) see also Restatement (Second) of Judgments, § 41(1)(a)(a beneficiary of a trust or estate is bound by a judgment in which the trustee participated in the action).

Although the Quitclaim Deed to Tobin was recorded outside the chain of title (see Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 444 P.2d 125 (Nev. 1968)), Tobin is nonetheless bound by the final judgment entered against the Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009).

This case presents a perfect example of why this Court extends issue preclusion and claim preclusion to a party's privities. For years, Nevada courts were flooded with quiet title disputes arising in connection with NRS Chapter 116 Foreclosures like the Quiet Title Litigation involved in this case. For nearly a decade, judges in Nevada have been attempting to move thousands of such cases through their already over-burdened dockets. If this Court simply ignored the fact that issue preclusion and claim preclusion apply to parties *in privity* with a party to prior litigation, any party who litigated an NRS Chapter 116 quiet title claim that wished to challenge such a sale a second time (perhaps with the sole hope of obtaining a nuisance cost-of-defense settlement), could simply record a wild deed for no consideration to a related entity, trust, or individual, just like Tobin did here. Ignoring the privity element would defeat the public policy in support of the

doctrines of issue and claim preclusion and could overwhelm the courts in Nevada with a second flood of quiet title claims seeking do-overs.

The district court correctly found that Tobin's claims are barred by issue and claim preclusion. This Court should affirm the district court's decision.

Finally, the district court did not abuse its discretion in finding that Tobin's Amended Complaint was a multiplication of the Quiet Title Litigation, precluded by issue and claim preclusion, and thus, was brought without reasonable ground such that an award of attorney's fees and costs was proper pursuant to NRS 18.010(2)(b). Id. This is precisely the type of case the Nevada Legislature sought to deter by enacting NRS 18.010(2)(b). This Court should affirm the district court's award.

IV. ARGUMENT

A. The district court correctly found that Tobin's Amended Complaint is barred by issue and claim preclusion.

In 2008, this Court clarified Nevada law regarding *res judicata* and collateral estoppel, adopting the modern terminology of claim and issue preclusion respectively, and establishing separate tests for each. See Five Star Capital Corp. v. Ruby, 124 Nev. 1048, 194 P.3d 709 (Nev. 2008).

The Five Star Court set forth a three-part test for determining whether claim preclusion should apply: (1) the parties *or their privies* are the same; (2) the final judgment is valid; and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case. Id. at 1054, 194

P.3d at 713. The majority of state and federal courts utilize these three factors. Id. at 1054, 194 P.3d at 713. Claim preclusion generally applies to all grounds of recovery, regardless of the nature or category of damages request. Id. At 1058, 194 P.3d at 715.

A policy-driven doctrine, claim preclusion is designed to promote finality of judgments and judicial efficiency by requiring a party to bring all related claims against its adversary in a single suit, on penalty of forfeiture. Id. “[A]ll claims based on the same facts and alleged wrongful conduct that were *or could have been brought* in the first proceeding are subject to claim preclusion.” G.C. Wallace v. Eight Judicial Dist. Court, 127 Nev. 701, 707, 262 P.3d 1135, 1139 (Nev. 2011) (emphasis added) (finding that because a tenant’s default gave rise to both a landlord’s summary eviction as well as the landlord’s later damages for breaching the lease, the two actions were based upon an identical set of facts that could have been brought simultaneously).

In addition, Five-Star established a four-part test for issue preclusion: (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. at 1055, 194 P.3d at 713.

1. The parties or their privies are the same.

Tobin's Opening Brief argues that because Tobin was not allowed to participate in the Quiet Title Litigation in her individual capacity, the district court erred in finding that Tobin's claims in this action are barred by issue and claim preclusion. The problem with Tobin's argument is that it completely ignores the fact that issue and claim preclusion apply if a party is *in privity with a party to the prior litigation*. Here, there is no question that Tobin, in her individual capacity, is in privity with the Hansen Trust. Likewise, Red Rock is in privity with the HOA.² Finally, as set forth in the factual section above, the Chiesi Respondents are in privity with Jimijack.³

Any interest Tobin acquired in the Property in her individual capacity (which was none) derived from the Quitclaim Deed Tobin recorded during the course of the Quiet Title Litigation, by which the Hansen Trust purported to transfer its

² Red Rock acted as the HOA's agent in the HOA Foreclosure. In the Quiet Title Litigation, Tobin, in her capacity as trustee of the Hansen Trust, asserted claims against the HOA by arguing that the HOA's agent – Red Rock – failed to comply with NRS Chapter 116. Accordingly, Red Rock was in privity with the HOA. The undersigned anticipates that Red Rock will further expand on this issue in its Answering Brief.

³ Tobin's Opening Brief made no attempt to argue that issue and claim preclusion would not apply because the Chiesis were not parties to the Quiet Title Litigation. However, even if Tobin had not waived the argument by failing to raise it in her Opening Brief, there is no question the Chiesis are in privity with Jimijack. Thus, the doctrines of issue and claim preclusion apply.

(extinguished) interest in the Property to Tobin individually for no consideration. 20 AA4176-79. Nevada law is clear: a person is in privity with another if the person acquired an interest through inheritance, succession, or purchase. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009). Although the Quitclaim Deed to Tobin constitutes a “wild” deed (i.e., a deed outside the chain of title (see Snow v. Pioneer Title Ins. Co., 84 Nev. 480, 444 P.2d 125 (Nev. 1968))), Tobin is nonetheless bound by the final judgment entered against the Hansen Trust. Bower v. Harrah's Laughlin, Inc., 125 Nev. 470, 481, 215 P.3d 709, 718 (Nev. 2009).

Moreover, Tobin participated in the Quiet Title Litigation in her capacity as trustee of the Hansen Trust. Her participation in the Quiet Title Litigation as trustee, standing alone, is likewise sufficient to find that Tobin was in privity with the Hansen Trust. Addressing the privity element in Harrah's, the Nevada Supreme Court noted that its holding was consistent with the Restatement (Second) of Judgments, § 41(1)(a), which provides that a trustee or beneficiary of a trust or estate is bound by a judgment in which the trustee participated in the action. Harrah's, 125 Nev. at 481, 215 P.3d at 718.

Here, it is undisputed that Tobin participated in the Quiet Title Litigation in her capacity as trustee *and* beneficiary of the Hansen Trust. 19 AA 3976-78. In addition, Tobin testified at the bench trial in the Quiet Title Litigation. Indeed, it was Tobin's *own trial testimony* that proved fatal to the Hansen Trust's counterclaim against

Jimijack. 20 AA4180-97 at Conclusion of Law No. 5 (Tobin's acknowledgement that the house had been subject to multiple short sales, the Trust was in default with the lender and the HOA, and Tobin had received the Notice of Foreclosure Sale was fatal to her claim that the HOA Foreclosure was invalid). For that same reason, the Court of Appeals affirmed the district court's judgment, finding that the HOA Foreclosure was valid because the Hansen Trust was continuously in default on obligations that were properly included in the HOA's lien from the date the underlying notice of delinquent assessment lien was recorded to the date of the foreclosure sale. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021).

2. The final judgment is valid and was actually litigated.

The Quiet Title Litigation resulted in a final judgment entered on June 24, 2019. 20 AA4181-97. Before entry of the final judgment, Tobin, in her capacity as trustee, appealed. Rather than seeking a stay of the judgment pending appeal, Tobin filed this new action, asserting the same claims that were previously rejected in the Quiet Title Litigation. Regardless, a judgment on appeal retains its preclusive effect for purposes of both claim and issue preclusion. See Edwards v. Ghandour, 123 Nev. 105, 117, 159 P.3d 1086, 1094 (Nev. 2007), disagreed with on other grounds in Five Star, 124 Nev. at 1053-54, 194 P.3d at 712-13.

There is no question that the Quiet Title Litigation was actually litigated. The Hansen Trust's counterclaims against Jimijack proceeded to a bench trial. 20 AA4181-97.

Finally, while not necessary for the application of issue or claim preclusion, the district court's final judgment in the Quiet Title Litigation was appealed and affirmed by the Nevada Court of Appeals. In a detailed opinion, the Nevada Court of Appeals found that the HOA Foreclosure was valid because the Hansen Trust was continuously in default on obligations that were properly included in the HOA's lien from the date the underlying notice of delinquent assessment lien was recorded to the date of the foreclosure sale. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021).

3. The subsequent action is based on the same claims.

Issue preclusion may be applicable "even though the causes of action are substantially different, if the same fact issue is presented." LaForge v. State, University System, 116 Nev. 415, 420, 997 P.2d 130,134 (Nev. 2000)(citing Clark v. Clark, 80 Nev. 52, 56, 389 P.2d 69, 71 (Nev. 1964)). The court in the prior action must have addressed and decided the same underlying factual issues. Id.

Here, while the claims for relief have been restated, the issue presented in the Amended Complaint is the same issue that was previously fully adjudicated in the Quiet Title Litigation, i.e., whether the HOA Foreclosure followed the procedures

of NRS Chapter 116 to constitute a valid sale. Compare 19 AA3980-4174 with 16 AA3239-56. In both Orders entered in the Quiet Title Litigation, Judge Kishner considered, and rejected as futile, Tobin’s attempt to challenge the validity of the sale *based on Tobin’s own letter and trial testimony*. See 19 AA 3834-43 and 20 AA4181-97. The district court’s finding was thereafter affirmed by the Nevada Court of Appeals. See Tobin v. Stokes, 79295-COA, 2021 Nev. App. Unpub. LEXIS 199, 2021 WL 1401498 (Nev. App. Apr. 12, 2021).

By filing a second complaint regarding the same transaction that was involved in the Quiet Title Litigation, Tobin impermissibly attempted to have the district court in this action substitute its judgment for that of Judge Kishner – and worse – the Nevada Court of Appeal’s review of the final judgment entered in the Quiet Title Litigation.

Tobin’s Amended Complaint goes against the public policy reasons supporting issue and claim preclusion which is founded upon the “public policy of limiting litigation by preventing a party who had one full and fair opportunity to litigate an issue from again drawing it into controversy.” Bower v. Harrah’s Laughlin, Inc., 125 Nev. 37, 215 P.3d 709, 718 (Nev. 2009). The district court correctly found that Tobin’s claims were barred by issue and claim preclusion as Tobin already had an opportunity to assert her claims as trustee of the Hansen Trust. 21 AA 4379. Tobin is bound by the final judgment entered against the Hansen Trust.

Id. Accordingly, this Court should affirm the district court's finding that Tobin's Amended Complaint is barred by the doctrines of issue and claim preclusion.

B. The district court did not abuse its discretion in awarding the Chiesi Respondents their attorney's fees and costs incurred in defense of Tobin's frivolous claims.

1. Tobin's claims were brought without reasonable grounds.

When a claim is brought or maintained without reasonable ground, NRS 18.010(2)(b) allows a court to award the prevailing party its attorney's fees incurred in defending against the groundless claims. NRS 18.010(2)(b) provides:

(2) In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

.....

(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

(emphasis added).

This Court has interpreted NRS 18.010(2)(b) to require the trial court to determine whether a party had reasonable grounds for its claims or defenses. See Bergman v. Boyce, 109 Nev. 670, 856 P.2d 560 (Nev. 1993) (finding that the trial court abused its discretion in denying defendant’s motion for attorney’s fees where some of plaintiff’s claims were groundless). A claim is groundless if the claim is not supported by any credible evidence. Id. at 675, 856 P.2d at 563.

Here, the district court correctly found that Tobin’s Amended Complaint was a “multiplication” of the Quiet Title Litigation, precluded by issue and claim preclusion, and thus, was brought without reasonable ground such that an award of attorney’s fees and costs was proper pursuant to NRS 18.010(2)(b). Id. Tobin’s Amended Complaint is part of a pattern of harassing and vexatious litigation. Unless this Court upholds the sanctions imposed by the district court, Tobin will continue to abuse the legal system by filing further frivolous and vexatious claims that overburden the limited judicial resources of this state, thereby hindering the timely resolution of meritorious claims and increasing the costs of engaging in business and providing professional services to the public.

After the district court entered its order granting the Chiesi Respondents’ Motion for Attorney’s Fees and Costs, Tobin continued her pattern of harassing and vexatious litigation by filing a Third-Party Complaint against all counsel involved in this litigation. See “Nona Tobin’s Third-Party Complaint vs. Steven B. Scow;

Brody R. Wight; Joseph Hong; Melanie Morgan; David Ochoa; Brittany Wood”, filed on March 22, 2021, in Red Rock Financial Services v. Tobin et al., Case No. A-21-828840-C. Tobin’s 273-page filing in that action included state bar complaints (all of which were dismissed without notice to counsel as meritless), attorney general complaints, and links to online postings that disparage counsel involved in this action. Although Tobin recently voluntarily dismissed her filing in that action after failing to effectuate service, the filing provides further support for the district court’s finding that sanctions are required to deter Tobin’s vexatious conduct. This is precisely the type of case the Nevada Legislature sought to deter by enacting NRS 18.010(2)(b).

2. Tobin waived her objection to the cost award.

The district court did not abuse its discretion in awarding the Chiesi Respondents \$308.99 in costs. The Chiesi Respondents only sought to recover their filing fees charged by the district court for appearing in this action and for filing five documents through the district court’s e-file and serve system (which imposes a \$3.50 charge, per filing). The Chiesi Respondents’ costs were supported by the Memorandum of Costs and Disbursements and the court’s own docket.

For the first time on appeal, Tobin argues that the \$308.99 cost award – supported by the court’s own docket – was not supported by “adequate documentation evidencing that the costs were necessary to and incurred in this

action.” However, Tobin did not raise this argument at the district court. 21 AA 4408-33. Accordingly, the argument is deemed waived on appeal. Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (Nev. 1981)(“A point not urged in the trial court . . . is deemed to have been waived and will not be considered on appeal.”). Accordingly, this Court should affirm the district court’s award of costs in the amount of \$308.99.

3. The district court properly applied the *Brunzell* factors to award the Chiesi Respondents attorney’s fees.

The district court did not abuse its discretion in applying the Brunzell factors to award the Chiesi Respondents \$8,640.00 in attorney’s fees. Tobin’s Opening Brief argues that the time spent was unreasonable in light of counsel’s “familiarity” with the Quiet Title Action. See Opening Brief at p.3 and p.13 (incorrectly asserting that the undersigned represented the Chiesi Respondents in the Quiet Title Litigation). However, the Chiesi Respondents were not parties to the Quiet Title Litigation and their counsel’s “familiarity” with the Quiet Title Litigation was based on their counsel’s thorough analysis of the prior docket – in this action – to ensure the Chiesi Respondents were represented by competent counsel as required by Nevada Rule of Professional Responsibility 1.1 (Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation).

Through her Amended Complaint, Tobin sought to invalidate the Chiesis' title to their Property. Thus, Tobin's Amended Complaint placed the Chiesis at risk of losing their home **and** the \$505,000 they paid to purchase of the Property! To suggest that a "simple one-paragraph joinder" would have been adequate to protect the Chiesis' interest completely ignores the second Brunzell factor: the character of the work to be done, including its importance and the responsibility imposed. Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P.2d 31 (Nev. 1969). Counsel had an ethical obligation to competently defend the Chiesis' title to their Property. To do so, counsel was required to become familiar with the Quiet Title Litigation. The district court correctly found that the hours spent analyzing the docket from the Quiet Title Litigation was reasonable in light of its importance to this case. The district court did not abuse its discretion in awarding the Chiesi Respondents \$8,640.00 in attorney's fees to preserve their home and their substantial investment. Accordingly, this Court should affirm the district court and award the Chiesi Respondents their reasonable attorney's fees and costs.

V. CONCLUSION

As set forth above, the district court properly found that Tobin's claims are barred by issue and claim preclusion. Tobin participated in the Quiet Title Litigation in her capacity as trustee and beneficiary of the Hansen Trust. Moreover, Tobin acquired her purported interest in the Property by Quitclaim Deed from the Hansen

Trust while the Quiet Title Litigation was pending. As a result, there is no question that Tobin is in privity with the Hansen Trust.

The Court of Appeals has already fully considered and affirmed the final judgment in the Quiet Title Litigation, confirming that the HOA Foreclosure followed the procedures of NRS Chapter 116 to constitute a valid sale. Issue and claim preclusion preclude Tobin from overturning the valid HOA Foreclosure in this action, as Tobin is in privity with the Hansen Trust.

Finally, the district court did not abuse its discretion in finding that Tobin's Amended Complaint was a multiplication of the Quiet Title Litigation, brought without reasonable ground, such that an award of attorney's fees and costs was proper pursuant to NRS 18.010(2)(b).

This Court should affirm the district court.

Dated this 25th day of October, 2021.

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NRAP 28.2 ATTORNEY CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 97-2003 14 font size Times New Roman type;

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 6515 words;

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules

of Appellate Procedure.

Dated this 25th day of October, 2021.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25(c)(1)(B), I hereby certify that I am an employee of Maurice Wood, and that on the 25th day of October, 2021, I submitted **RESPONDENTS BRIAN CHIESI, DEBORA CHIESI, AND QUICKEN LOANS INC.'S ANSWERING BRIEF** to the Supreme Court of Nevada's electronic docket for filing and service upon the following:

/s/ Brittany Wood

An Employee of MAURICE WOOD