Circuit Court for Montgomery County
Case No. C-15-CV-22-002421

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 64

September Term, 2023

JAMES G. SWEET

v.

THORNTON MELLON, LLC, ET AL.

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 2, 2024

This is the second appeal filed in this Court by James Sweet, appellant, in connection with a tax sale foreclosure of right of redemption. In this case, appellant challenges the order of the Circuit Court for Montgomery County granting the motion to dismiss filed by appellees, Al Czervik, LLC and Thornton Mellon, LLC.

On appeal, appellant presents the following questions for this Court's review, which we have re-ordered and rephrased slightly, as follows:

1. Did the circuit court err in denying appellant's motion for default?
2. Did the circuit court err in granting appellees' motion to dismiss?

For the reasons set forth below, we shall affirm, in part, and vacate in part, the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Because we are reviewing the grant of a motion to dismiss, we recite the facts as stated in appellant's complaint. *Hancock v. Mayor and City Council of Baltimore*, 480 Md. 588, 596 n.2 (2022); *Wheeling v. Selene Fin. LP*, 473 Md. 356, 375 (2021). We supplement those facts with information drawn from the circuit court's memorandum opinion in a prior case involving the same parties, the same real property, court records, as well as our unreported opinion in the appeal that was taken in that case. *See* Md. Rule 5-201(c), (f).

Doris Sweet and Daniel Grosso owned, as tenants by the entirety, a condominium located on Interlachen Drive in Silver Spring, Maryland (the "Property"). On January 4, 2016, Ms. Sweet died and her ownership interest in the Property automatically passed to her husband, Mr. Grosso. On September 25, 2017, Mr. Grosso died. Following Mr. Grosso's death, appellant's father entered the Property and located Mr. Grosso's will.

Appellant's father observed that all of Mr. Grosso's personal possessions were present inside the Property.

On October 13, 2017, appellant's father attempted to open an estate record for Daniel Grosso. The Register of Wills for Montgomery County, however, closed the estate on October 17, 2017, noting that Mr. Grosso's will was unsigned and the "estate had been closed without the appointment of a personal representative." In June 2018, Thornton Mellon purchased the Property at a tax sale.

On December 18, 2018, Thornton Mellon filed a Complaint to Foreclose Right of Redemption. It alleged that "[m]ore than six (6) months ha[d] elapsed since" the sale of the Property, and it had "not been redeemed by any party in interest." This Court previously noted that Thornton Mellon made "several attempts to serve" the record owners of the Property, and that it "filed a motion requesting a waiver of alternative service and a motion for judgment." *Sweet v. Thornton Mellon LLC*, No. 0700, 2021 WL 3076362, at *1 (Md. App. July 21, 2021), *cert. denied*, 476 Md. 427 (2021), 142 S. Ct. 2677 (2022).

On July 2, 2019, the circuit court granted Thornton Mellon's motion and issued a default judgment. *Id*. Thornton Mellon later "assigned its interest in the tax sale certificate to Al Czervik LLC." *Id.* On August 27, 2019, appellee, Al Czervik "obtained and recorded a tax sale deed to the [P]roperty." *Id.*

On January 16, 2020, two years after the Mr. Grosso's death, the Register of Wills appointed appellant as the personal representative of the estate of Daniel A. Grosso.[1] On January 31, 2020, appellant sought to intervene and vacate the circuit court's order of default judgment. *Id.* at *2. He argued that Thornton Mellon "failed to serve the Estate or its personal representative, or to have a personal representative appointed and made party to this action," and therefore, Thornton Mellon "failed to provide the Estate's personal representative with the statutorily required pre and post suit notices required in an action to foreclose the right of redemption."

The circuit court held a hearing and denied appellant's motion to vacate the default judgment. *Id.* The court found that Thornton Mellon "satisfied the statutory requirements to foreclose the right of redemption," stating:

> Contrary to [appellant's] suggestion that "nail and mail" notices were insufficient, the actions taken by [Thornton Mellon] here were not mere gestures. Instead, the actions taken and notices given were reasonably calculated to provide notice to anyone interested in the Property, and were sufficient[ly] related to Mr. Grosso as a properly named individual defendant under the statute and the circumstances existing here. In addition to the newspaper publication and the courthouse postings, there were repeated mailings to the Property, as well as the required actual posting on the Property's door.
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> [Appellee Thornton Mellon] satisfied its obligations under the statute to provide required notice, and indeed went above and beyond its required obligations and performed additional searches, which led it to conclude that Mr. Grosso was still alive.

[1] On January 16, 2020, appellant filed a Consent to Appointment of Personal Representative with Register of Wills for Montgomery County. That same day, appellant received a Notice of Appointment, and the Register of Wills issued a Notice to Creditors and a Notice to Unknown Heirs.

The court declined to vacate its order foreclosing the right of redemption. On September 11, 2020, appellant noted his first appeal in this matter. *Id.*

On appeal, we declined to consider the merits of the case, concluding that the case was moot because the Property had been sold to a bona fide purchaser. *Id.* at *3–4. We reasoned that, because appellant failed to post a supersedeas bond, and the Property was sold to a third-party, "the [P]roperty had no defects in title and the purchasers were, as a matter of law, bona fide purchasers." *Id.* at *3. We concluded that "reversing the circuit court's judgment would be of no effect" because there was no longer an effective remedy this Court could provide. *Id.* at *3–4.

On June 30, 2022, appellant filed a complaint in the circuit court against both appellees, alleging negligence, "money had and received/constructive trust," detinue, conversion, abuse of process, and wrongful foreclosure.

In Count I, [appellant] alleged negligence, stating:

> [Appellees] had a duty to provide adequate notice and the opportunity to be heard to [appellant] or a Court appointed personal representative for the Estate of Daniel A. Grosso prior to seeking and obtaining the July 2, 2019 judgment and prior to removing and disposing of Mr. Grosso's personal property located in the condominium.
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> * * *
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> [Appellees] breached their duties by failing to provide reasonable notice and the opportunity to be heard to [appellant] and in failing to adequately protect and return the contents of condominium [sic] to [appellant] or another representative of the Estate of Daniel A. Grosso.

With respect to Count II, appellant alleged that appellees "obtained title to the condominium and its contents by abusing the court's process, specifically by failing to

provide [him] with constitutionally required notice and due process and the opportunity to be heard." He claimed that appellees "ha[d] been unjustly enriched by obtaining title to the [Property] and selling it to an alleged holder in due course and keeping the proceeds of the sale." In Count III, appellant alleged that appellees "unjustly detained the contents of the [Property] to which [he] is entitled to immediate possession or the value thereof."

Count IV alleged conversion, stating: "[Appellees] intentionally and wrongfully obtained possession of the [Property] and the contents therein, including valuable musical instruments worth in excess of $30,000," and that appellees removed the contents of the Property without any notice to appellant "and failed to provide [appellant] with notice and a reasonable opportunity to remove the contents after the commencement of the foreclosure proceedings."

With respect to Count V, appellant that alleged appellees abused the court's process "by means intentionally used to avoid notice and the opportunity to be heard to [appellant] or another personal representative of the Estate of Daniel A. Grosso." He contends that appellees "knew or should have known that Mr. Grosso was deceased and thus, that it was a legal and factual impossibility to serve a deceased individual with the summons and Complaint."

Finally, in Count VI, appellant alleged that Thornton Mellon wrongfully foreclosed on the Property "without giving [him] . . . constitutionally required notice and the opportunity to be heard prior to the entry of a final judgment." Appellant's complaint sought compensatory and punitive damages, as well as the contents of the Property or the value of the contents.

On September 9, 2022, appellees filed a Motion to Dismiss, asserting that the circuit court adjudicated the issues presented by appellant in a previous case involving the same parties, and the ruling was appealed and affirmed.[2] Appellees alleged that appellant's complaint was "a textbook example of a collateral attack on an enrolled judgment," and they asked the court to dismiss the complaint "with prejudice."

On December 15, 2022, appellant filed a Motion for Entry of Order of Default pursuant to Md. Rule 2-613(b).[3] He alleged that appellees did not file an answer as required by Md. Rule 2-321, i.e., within 30 days after being served, and therefore, the circuit court was required to enter an order of default. He argued further that "a motion to dismiss on the basis of one or more affirmative defenses is not a motion to dismiss for failure to state a claim under Md. Rule 2-322," and therefore, appellees' motion to dismiss did not extend their "time to file an Answer under Md. Rule 2-322(c)." Appellant also filed an opposition to the motion to dismiss, arguing that the prior action did not adjudicate his claim seeking the return of the contents of the condominium or their value because the Appellate Court dismissed the appeal on the ground of mootness, and therefore, the judgment in the prior action had no preclusive effects. He further argued that appellees failed to file an answer, thereby waiving all affirmative defenses, including collateral estoppel and res judicata. Finally, appellant argued that, because the prior action "was never brought or served upon"

[2] On August 20, 2022, appellees received service.

[3] Md. Rule 2-613(b) provides, in relevant part, as follows: "If the time for pleading has expired and a defendant has failed to plead as provided by these rules, the court, on written request of the plaintiff, shall enter an order of default."

the personal representative of Mr. Grosso's Estate, the judgment in that case could not have preclusive effect on the present case.

On February 8, 2023, the court held a hearing on appellees' motion. Counsel for appellees argued that appellant's claim was "barred by res judicata or collateral estoppel because everything is premised on [his] clients not having performed a proper [tax sale] foreclosure and therefore not having obtained title to that property appropriately." Counsel argued further that appellant intervened in the prior case, his motion to vacate was denied, and appellant "had every opportunity to have his day in court."

Appellant asserted that appellees "failed to file an answer" to the initial complaint. He argued that, as a result, appellees waived any affirmative defenses, and therefore, they admitted "all [of] the allegations [in] the complaint." Counsel for appellant argued that, because appellee did not cite Md. Rule 2-322(b)(2) in their motion, "it's really a motion for summary judgment."

With respect to appellant's argument that appellees' motion to dismiss was not for failure to state a claim, the circuit court stated: "We're going to move past that because the very first line of [appellees'] argument, in their memorandum says, '[w]hen considering a motion to dismiss for failure to state a claim upon which relief can be granted.' So, they're clearly moving under Rule 2-322[(b)]2." The court noted that, by moving pursuant to Md. Rule 2-322(b)(2) within the appropriate timeframe, they stayed the time for filing an answer.

The court then granted appellees' motion to dismiss "without leave to amend, and with prejudice." The court reasoned as follows:

> It's apparent to me that the issues, and claims, that are presented in the complaint, filed in this action on June 30, 2022, are in fact the same issues, the same claims that were presented to Judge Storm, that Judge Storm in his well-reasoned, and detailed opinion, decided those issues. The case was then appealed to the Court of Special Appeals, now the Appellate Court of Maryland, which dismissed the appeal based upon the mootness doctrine, because the property had been sold and conveyed, and there was no bond posted to stay the action.
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> Our Court of Appeals, now our Supreme Court, I believe, denied cert, and certainly the United States Supreme Court also denied cert.
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> I think, in light of everything, that the plaintiffs have had their day in court. This might be a different outcome had there been a supersedeas bond posted in this case, but that's -- or in the previous case -- but that's not an issue that's before me. That's sort of an aside.
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> But the bottom line is, that case law, as well, settled in this state, the Court of Special Appeals, now the Appellate Court of Maryland, did decide the case based upon mootness. If I were to rule for the plaintiffs in this case, it would basically be an end around the mootness doctrine, and it would be allowing what the doctrines of collateral estoppel and res judicata both seek to avoid, and that is repetitive, unending litigation. I think that the claims presented in the complaint are barred by the doctrine of res judicata, or as it's sometimes called claim preclusion.
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> I think to the extent that the -- are issues, for example, on the detinue issue, which is pleaded in count three of the complaint, that may be also barred by collateral estoppel, or claim preclusion because Judge Storm's decision on notice would seem to be dispositive of that issue. In any event, I think each and every count of the complaint is barred by both res judicata and collateral estoppel. So, for both of those reasons, I'm going to grant the motion to dismiss. I am dismissing the complaint without leave to amend, and with prejudice, and I'm going to issue, or assign, rather, an order that's consistent with that ruling.

An order granting appellees' motion to dismiss was entered by the circuit court five days later.

This timely appeal followed.

DISCUSSION

I.

Default Judgment

Appellant contends that the circuit court erred in denying his motion. He asserts that appellees failed to file an answer within the time prescribed by the Maryland rules. In response, appellees filed a line informing this Court that "they will not be submitting a brief in this matter or otherwise participating in this appeal."

We review a circuit court's grant or denial of default judgment for abuse of discretion. *See Mason v. Wolfing*, 265 Md. 234, 235 (1972). As we have stated:

> An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding principles, and the ruling under consideration is clearly against the logic and effect of facts and inferences before the court, or when the ruling is violative of fact and logic.

Bacon v. Arey, 203 Md. App. 606, 667 (quoting *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC.*, 388 Md. 1, 28 (2005)) (cleaned up), *cert. denied*, 472 Md. 607 (2012). *Accord Sibley v. Doe*, 227 Md. App. 645, 658, *cert. denied*, 448 Md. 726 (2016).

Maryland Rule 2-321(a) provides that "[a] party shall file an answer to an original complaint . . . within 30 days after being served, except as provided by sections (b) and (c) if this Rule." Section (c) provides:

> (c) Automatic Extension. When a motion is filed pursuant to Rule 2-322 or when a matter is remanded from an appellate court or federal court, the time for filing an answer is extended without special order to 15 days after entry of the court's order on the motion or remand or, if the court grants a motion for a more definite statement, to 15 days after the service of the more definitive statement.

Md. Rule 2-321(c).

Maryland Rule 2-322(b) provides that a party may raise, in a motion to dismiss filed before an answer is required, the defense of "failure to state a claim upon which relief can be granted." "When a motion is filed pursuant to Rule 2-322 . . . the time for filing an answer is extended without special order to 15 days after the entry of the court's order on the motion or remand." Md. Rule 2-321(c).

Here, appellant filed his complaint on June 30, 2022. Appellees were served with that complaint on August 29, 2022. Appellees filed their motion to dismiss on September 9, 2022. As the circuit court observed during the ensuing hearing, appellees' motion was a motion to dismiss for failure to state a claim, noting that "the very first line of their argument, in their memorandum" said: "When considering a motion to dismiss for failure to state a claim upon which relief can be granted." To construe appellees' motion as anything other than a motion to dismiss for failure to state a claim would, as the circuit court observed, "put form over substance." We decline appellant's invitation to do so.

Thus, under Rule 2-321(c), appellees' motion to dismiss was "filed pursuant to Rule 2-322," thereby invoking the automatic extension.[4] Therefore, appellees' motion to

[4] The automatic extension extended the deadline for filing an answer "to 15 days after entry of the court's order on the motion[,]" Md. Rule 2-321(c), but because the circuit court granted the motion to dismiss, no answer was thereafter required.

dismiss for failure to state a claim was properly before the circuit court, and the court did not err in denying appellant's motion for default.[5]

II.

Motion to Dismiss

Appellant contends that the court erred in dismissing the complaint on the grounds of res judicata or collateral estoppel. He makes several arguments in that regard. Initially, he argues that the first action sought only to foreclose Mr. Grosso's right to redeem the Property from the tax sale foreclosure; it did not adjudicate his claim "for the return of the contents of the condo or their value." Moreover, he asserts that the "judgment in the first action had no preclusive effect on this action as a matter of law because the appeal in the prior action was dismissed on the basis o[f] mootness." Finally, appellant asserts that the default judgment had no res judicata or collateral estoppel effect on his right to bring an action for damages because a judgment purporting to foreclose the right of redemption against two deceased individuals was a nullity, and appellant was never named or served in the prior action. As indicated, appellees did not file a brief.

We review a circuit court's grant or denial of a motion to dismiss for legal correctness. *Estate of Brown v. Ward*, 261 Md. App. 385, 409 (2024). "This Court may affirm the dismissal of a complaint on any ground adequately shown by the record,

[5] "It is a well settled rule that the defense of res judicata may be interposed by demurrer when the fact and nature of the prior adjudication appear on the face of the pleadings." *Snodgrass v. Stubbs*, 192 Md. 287, 292 (1949). A demurrer is "[a] pleading stating that although the facts alleged in a complaint may be true, they are insufficient for the plaintiff to state a claim for relief and for the defendant to frame an answer." *Demurrer*, BLACK'S LAW DICTIONARY (12th ed. 2024).

regardless of whether the trial court relied on that ground or whether the parties raised that ground." *Bennett v. Ashcraft & Gerel, LLP*, 259 Md. App. 403, 451, *cert. denied,* 487 Md. 51 (2024). *Accord State v. Fabien*, 259 Md. App. 1, 13 (2023). "In reviewing the rulings, 'we assume the truth of all well-pleaded facts and allegations in the complaint, as well as the reasonable inferences drawn from them, in a light most favorable to the non-moving party.'" *Cecil v. Am. Fed'n of State, Cnty., and Mun. Emps.*, 261 Md. App. 228, 247 (2024) (quoting *Green Healthcare Sols., LLC v. Natalie M. LaPrade Md. Med. Cannabis Comm'n*, 254 Md. App. 547, 565–66 (2022)). Whether res judicata bars a particular action is a question of law, which we review *de novo*. *See Davidson v. Seneca Crossing Section II Homeowner's Ass'n, Inc.*, 187 Md. App. 601, 633 (2009).

"Res judicata, also known as claim preclusion or direct estoppel, means 'a thing adjudicated.'" *Anne Arundel Cnty. Bd. of Ed. v. Norville*, 390 Md. 93, 106 (2005) (quoting *Lizzi v. Washington Metro. Area Transit Auth.*, 384 Md. 199, 206 (2004)). It is "an affirmative defense barring the same parties from litigating a second lawsuit on the same claim, or any other claim arising from the same transaction or series of transactions and that could have been—but was not—raised in the first suit." *Id.* (quoting *Res Judicata*, BLACK'S LAW DICTIONARY (11th ed. 2019)). *Accord Daughtry v. Nadel*, 248 Md. App. 594, 629 (2020).

Res judicata protects the courts and the parties from the "burdens of relitigation." *Norville*, 390 Md. at 107. It "restrains a party from litigating the same claim repeatedly and ensures that courts do not waste time adjudicating matters which have been decided or

could have been decided fully and fairly." *Id.* As we explained in *Heit v. Stansbury*, 215 Md. App. 550, 565–66 (2013):

> Under Maryland Law, the requirements of *res judicata* or claim preclusion are: 1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; 2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and 3) that there was a final judgment on the merits. Therefore, a judgment between the same parties and their privies is a final bar to any other suit upon the same cause of action and is conclusive, not only as to all matters decided in the original suit, *but also as to matters that could have been litigated in the original suit. To avoid the vagaries of res judicata's preclusive effect, a party must assert all the legal theories he wishes to in his initial action, because failure to do so does not deprive the ensuing judgment of its effect as res judicata.* As can be seen, *res judicata* looks to the final judgment on the merits earlier entered in the same case *or same cause* and to the necessary legal consequences of that judgment.

(quoting *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.,* 361 Md. 371, 392 (2000)). Thus, we turn to the three requirements of res judicata.

With respect to the first requirement, that the parties in each action are the same or in privity, the Supreme Court has explained:

> [T]he term 'parties' includes all persons who have a direct interest in the subject matter of the suit, and have a right to control the proceedings, make defense, examine the witnesses, and appeal if an appeal lies. So, where persons, although not formal parties of record, have a direct interest in the suit, and in the advancement of their interest take open and substantial control of its prosecution, or they are so far represented by another that their interests receive actual and efficient protection, any judgment recovered therein is conclusive upon them to the same extent as if they had been formal parties.

Ugast v. La Fontaine, 189 Md. 227, 232–33 (1947) (internal citations omitted). *Accord Cochran v. Griffith Energy Servs., Inc.*, 426 Md. 134, 141 (2012).

Here, the parties to the 2019 and 2022 actions included James Sweet, Thornton Mellon, and Al Czervik. Although appellant was not a party at the commencement of the

original foreclosure action filed by Thornton Mellon in the 2019 foreclosure action, he moved to intervene on January 31, 2020, and he filed an answer to appellees' complaint to foreclose the Estate's right of redemption.[6] On September 2, 2020, the court granted the motion to intervene in the case. Moreover, appellant, as the personal representative of Mr. Grosso's estate, had a direct interest in Thornton Mellon's foreclosure action. Clearly, appellant and appellees were parties in both cases, even if the initial action was not served on appellant. The first requirement is satisfied.

With respect to the second requirement, whether "the claim presented in the current action is identical to the one determined in the prior adjudication," appellant argues that it is not because "the first action did not adjudicate [his] claim for the return of the contents of the condo or their value."

To determine whether a claim in a subsequent action is "identical" to a claim raised in a prior action, Maryland has adopted the "transactional approach" set forth in the Restatement (Second) of Judgments. *Gonsalves v. Bingel*, 194 Md. App. 695, 710 (2010), *cert. denied*, 417 Md. 501 (2011). Section 24 of the Restatement provides the general rule:

> (1) When a valid and final judgment rendered in an action extinguishes the plaintiff's claim pursuant to the rules of merger or bar (see §§ 18, 19), the claim extinguished includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.

[6] Appellant's Motion to Intervene (filed January 31, 2020) referenced an attached "Intervenor's Answer, Counterclaim and Third party-claim" as an attachment, Ex. 6. In its ruling, the circuit court stated: Although "[appellant] mentions that such a pleading was attached to his motion [to intervene], the court has been unable to locate one, and the docket entries fail to identify any such pleadings as having been filed." Appellant's answer to the complaint was filed on September 2, 2020, the same day the court issued its ruling.

> (2) What factual grouping constitutes a "transaction", and what groupings constitute a "series", are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage.

Restatement (Second) of Judgments § 24 (1982).

Section 25 of the Restatement ("Exemplifications of the General Rule Concerning Splitting") further clarifies how the transactional test works. *Gonsalves*, 194 Md. App. at 718. It states:

> The rule of § 24 applies to extinguish a claim by the plaintiff against the defendant even though the plaintiff is prepared in the second action
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> (1) To present evidence or grounds or theories of the case not presented in the first action, or
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> (2) To seek remedies or forms of relief not demanded in the first action.

Restatement (Second) of Judgments § 25.

Accordingly, res judicata bars relitigation not only of "all matters actually litigated" in a prior action, but also those "that could have been litigated[.]" *Becker v. Falls Rd. Cmty. Ass'n*, 481 Md. 23, 46 n.6 (2022) (quotation marks and citations omitted). As the Supreme Court of Maryland has summarized:

> The doctrine of claim preclusion, or *res judicata*, "bars the relitigation of a claim if there is a final judgment in a previous litigation where the parties, the subject matter[,] and causes of action are identical or substantially identical as to issues actually litigated and as to those which could have or should have been raised in the previous litigation."

R & D 2001, LLC v. Rice, 402 Md. 648, 663 (2008) (quoting *Norville*, 390 Md. at 106).

In the prior action, appellant challenged the validity of the foreclosure, contending that appellees had intentionally abused the court's process by purporting to serve process on people (Doris Sweet and Daniel Grosso) they knew were deceased. Appellant further pointed out that, upon the death of Mr. Grosso, all property, both real and personal, belonging to the decedent, "automatically passed by operation of law to the personal representative of Daniel A. Grosso's estate." Any claim to personal property associated with the foreclosure action, however, "should have been raised in the previous litigation." *Id.* at 663 (quoting *Norville*, 390 Md. at 106). Under the transactional test, we conclude that the claims that appellant raised in his second complaint, including claims regarding the personal property contained in the condominium, were "identical" to the claims he raised in the prior action challenging the validity of the tax sale.

With respect to the last requirement, however, there was not a final judgment on the merits because the case was dismissed as moot. *See Murray Int'l Freight Corp. v. Graham*, 315 Md. 543, 552 n.5 (1989) ("Where a party to a judgment cannot obtain the decision of an appellate court because the matter determined against him is immaterial or moot, the judgment is not conclusive against him in a subsequent action on a different cause of action."). *Accord Parkford Owners for a Better Cmty. v. Windeshausen*, 296 Cal. Rptr. 3d 825, 830 (Cal. Ct. App. 2022). "A [circuit] court judgment determined to be moot on appeal and dismissed has not been fully litigated, as appellate review of the merits was never completed." *Id.* at 833. *Accord People v. Taylor* 206 N.E. 3d 218, 225 (Ill. App. Ct. 2022) (Mootness is not "a finding on the merits."). "[L]itigants should be afforded more procedural fairness before being bound by all aspects of a [circuit] court's challenged

determination." *Windeshausen*, 296 Cal. Rptr. 3d at 834 (quoting *Samara v. Matar*, 419 P.3d 924, 931 (Cal. 2018)).

We agree with the California Court of Appeals that, where "an appellate court disposes of an appeal solely on a procedural or technical ground that does not reach the merits of the underlying controversy, such as mootness, the judgment does not have preclusive effect in subsequent litigation." *Id.* at 835. Accordingly, the litigation in *Sweet I* did not result in a final judgment on the merits, and it is not conclusive against appellant under the doctrine of res judicata.

Next, we address the circuit court's finding that "each and every count of [appellant's] complaint is barred by . . . collateral estoppel." The doctrine of collateral estoppel (issue preclusion) "looks to issues of fact or law that were actually decided in an earlier action, whether or not on the same claim." *Rice*, 402 Md. at 663. It "is a separate legal question, subject to de novo review." *Browne v. State Farm Mut. Auto. Ins. Co.*, 258 Md. App. 452, 471 (2023) (quoting *Garrity v. Md. State Bd. of Plumbing*, 221 Md. App. 678, 684 (2015)). We note, however, that collateral estoppel is closely allied to res judicata, and it too requires a "valid and final judgment." *Rice*, 402 Md. at 663. *Accord Murray Int'l Freight Corp.*, 315 Md. at 547 ("When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim.") (quoting Restatement (Second) of Judgments § 27 (1982)); *Janes v. State*, 350 Md. 284, 295 (1998). Under Maryland law, issue preclusion requires "a final judgment on the merits in the prior litigation." *Berrett v.*

Standard Fire Ins. Co., 166 Md. App. 321, 339 (2005), *aff'd*, 395 Md. 439 (2006). As indicated, that did not occur here where this Court dismissed the appeal as moot. *See Windeshausen*, 296 Cal. Rptr. 3d at 827, 833 (prior dismissal on mootness grounds did not constitute final judgment for purposes of issue preclusion). Accordingly, the circuit court erred in dismissing the complaint on the grounds that the resolution of the initial complaint precluded this complaint based on res judicata and collateral estoppel.

It may be that the dismissal of part or all of this second complaint is warranted on other grounds. *See, e.g.*, *Jones v. Rosenberg*, 178 Md. App. 54, 72 ("The effect of a final ratification of sale is *res judicata* as to the validity of such sale, except in the case of fraud or illegality."), *cert. denied*, 405 Md. 64 (2008). That, however, is a determination the circuit court must make on remand.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED, IN PART, AND VACATED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE SHARED BY PARTIES WITH 50% PAID BY APPELLANT, AND 50% PAID BY APPELLEE.