

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-382

ROBERT ALLEN SPEARS and
ALISA GREEN

APPELLANTS

V.

RECONTRUST COMPANY, N.A.,
DEUTSCHE BANK NATIONAL TRUST
CO. ET AL.

APPELLEES

Opinion Delivered April 24, 2013

APPEAL FROM THE PULASKI
COUNTY CIRCUIT COURT, THIRD
DIVISION
[NO. 60CV-11-3340]

HONORABLE JAY MOODY,
JUDGE

AFFIRMED

LARRY D. VAUGHT, Judge

Robert Spears and Alisa Green appeal from an order dismissing their second action against appellees “ReconTrust Company, N.A., as Attorney In Fact for, Deutsche Bank National Trust Company, as Trustee for, Morgan Stanley, ABS Capital I, Inc., Trust 2006-NC5, Mortgage Pass-Through Certificates, Series 2006-NC5.” We affirm on the basis of res judicata.

In the first action, which was based on appellees’ nonjudicial foreclosure on appellants’ property in Jacksonville, Arkansas, appellants alleged breach of contract, trespass, and conversion and sought replevin and damages. Appellees moved to dismiss. Appellants then filed a first amended complaint for breach of contract, trespass, conversion, replevin, and damages, asserting that appellees had no legal right to foreclose on the property for a number of reasons. Appellants alleged that a foreclosure sale had been held on October 15, 2009, after which the purchasers had taken possession of the property; that, on February 25, 2010, appellees had filed an affidavit to set aside the sale and reinstate the mortgage; that since then, they had continued



to wrongly possess appellants' property; and that appellees had no right to foreclose because they had no legal or beneficial interest in the mortgage. Appellants sought recovery of the property, including its contents, or damages. Appellees filed a motion to dismiss the amended complaint. On October 18, 2010, the circuit court entered an order dismissing appellants' complaint for failure to plead facts on which relief could be granted. On October 25, 2010, the circuit court issued an order granting appellees' motion to dismiss the amended complaint with prejudice. Appellants did not appeal from either order.

Asking for injunctive and monetary relief, appellants filed this action on July 6, 2011, raising several claims arising out of appellees' foreclosure against the same property, which was scheduled to be sold on July 7, 2011. They alleged that, because Deutsche Bank was not authorized to do business in the state of Arkansas (as required by Arkansas Code Annotated section 18-50-117 (Repl. 2003)), it could not proceed with a nonjudicial foreclosure under Arkansas Code Annotated sections 18-50-101 through 18-50-117 (Repl. 2003 and Supp. 2009); that it had breached a contractual duty of good faith and fair dealing; that appellees had violated the Arkansas Deceptive Trade Practices and the Arkansas Fair Debt Collection Practices Acts; and that they had been grossly negligent.

Deutsche Bank moved to dismiss on the bases of res judicata and Arkansas Rules of Civil Procedure 10(a), 10(c), 12(b)(5), and 12(b)(6). ReconTrust also filed a motion to dismiss. It argued that appellants' complaint should be dismissed for failure to effect proper service of process; that the summons was defective because it was not directed to a natural person, as required by Arkansas Rule of Civil Procedure 4(d)(5) and 4(d)(8); that Arkansas does not



recognize a cause of action for breach of an implied covenant of good faith and fair dealing; that the allegations in this complaint were res judicata because they could have been brought in the first action; and that the complaint should be dismissed because appellants asserted only legal conclusions, without alleging any facts, about its actions. Appellants responded that they would cause new summonses to be issued and served on the individuals authorized to receive service of process; that they would amend the complaint to clarify that Deutsche Bank was a separate defendant; and that the previous dismissals were not res judicata.

On January 20, 2012, the circuit court entered an order granting ReconTrust's motion to dismiss with prejudice, stating:

The Court finds that the Motion is well taken and grants ReconTrust's Motion for the following reasons: (1) Plaintiffs failed to effectuate proper service of process on ReconTrust because the summons to ReconTrust is not directed to a natural person and, therefore, fails to comply with Arkansas Rule of Civil Procedure 4; (2) the claims asserted in Plaintiffs' Verified Complaint are barred by the doctrine of *res judicata* because . . . such claims challenging the foreclosure on Plaintiffs' property were previously dismissed by this Court with prejudice in the action styled *Robert Spears and Alisa Green v. ReconTrust Company, N.A., as Attorney In Fact for, Deutsche Bank National Trust Company, as Trustee for, Morgan Stanley ABS Capital I, Inc., Trust 2006-NC5, Mortgage Pass-Through Certificates, Series 2006-N5*, Case No. CV-10-1737; (3) Plaintiffs' Verified Complaint fails to state a cause of action for which relief can be granted based on theories of breach of contract, negligence, violation of the Arkansas Deceptive Trade Practices Act or violation of the Arkansas Fair Debt Collection Practices Act.

The court also dismissed the complaint against Deutsche Bank on the same grounds and for an additional reason: the complaint failed to name Deutsche Bank as a party to this action, as required by Rule 10(a). Appellants then pursued this appeal.

In cases where the appellant claims that the trial court erred in granting a motion to dismiss, we review the trial court's ruling using a de novo standard of review. *Holliman v. Johnson*,



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2012 Ark. App. 354, 417 S.W.3d 222. When the issues on appeal do not involve factual questions but rather the application of a legal doctrine such as res judicata, we simply determine whether the appellees were entitled to judgment as a matter of law. *Winrock Grass Farm, Inc. v. Affiliated Real Estate Appraisers of Ark., Inc.*, 2010 Ark. App. 279, 373 S.W.3d 907.

Although appellants raise nine points, our determination of their challenge to the circuit court's ruling on res judicata is dispositive of the issues that appellants preserved for appeal.¹ Appellants argue that res judicata does not bar this lawsuit because it includes different causes of action and is based on events that occurred after the first action was dismissed. They argue that the first lawsuit included claims arising only out of the October 15, 2009 foreclosure sale, while this action is entirely based upon the foreclosure sale scheduled for July 7, 2011. We disagree.

Under the claim-preclusion facet of res judicata, a valid and final judgment rendered on the merits by a court of competent jurisdiction bars another action by the plaintiff or his privies against the defendant or his privies on the same claim. *Sutton v. Gardner*, 2011 Ark. App. 737, 387 S.W.3d 185. Claim preclusion bars not only the relitigation of claims that were actually litigated

¹We do not address appellants' points concerning the first lawsuit and whether Deutsche Bank was dismissed from it because they did not raise them below, and the trial court did not rule on them. *Ausman v. Hiram Shaddox Geriatric Ctr.*, 2013 Ark. 66, 426 S.W.3d 379; *Buckalew v. Arvest Trust Co.*, 2013 Ark. App. 28, 425 S.W.3d 819. Appellants also gave no citation to authority for their arguments about Deutsche Bank's dismissal in the first action, the Arkansas Fair Debt Collection Practices Act, and the Arkansas Deceptive Trade Practices Act. We will not consider an argument on appeal that has no citation to authority or convincing legal argument, nor will we research or develop an argument for an appellant. *Baker v. Norris*, 369 Ark. 405, 255 S.W.3d 466 (2007). Appellants cite no authority to support their argument concerning the application of res judicata to the Arkansas Statutory Foreclosure Act, and the trial court did not rule on it. They also raise their argument about the requirement of posting a bond before obtaining injunctive relief for the first time on appeal.



in the first suit but also those that could have been litigated. *Id.* at 6, 387 S.W.3d at 191. Where a case is based on the same events as the subject matter of a previous lawsuit, claim preclusion will apply even if the subsequent lawsuit raises new legal issues and seeks additional remedies. *Id.* at 6, 387 S.W.3d at 191.

In reviewing the circuit court's decision on a motion to dismiss under Arkansas Rule of Civil Procedure 12(b)(6) (2012), we treat the facts alleged in the complaint as true and view them in the light most favorable to the party who filed the complaint. *Gorman v. Gilliam*, 2010 Ark. App. 118, 374 S.W.3d 117. In testing the sufficiency of the complaint on a motion to dismiss, all reasonable inferences must be resolved in favor of the complaint and the pleadings are to be liberally construed. *Id.* at 6, 374 S.W.3d at 121. However, Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. *Id.* at 6, 374 S.W.3d at 121. According to Ark. R. Civ. P. 8(a)(1) (2012), a pleading that sets forth a claim for relief shall contain a statement in ordinary and concise language of facts showing that the pleader is entitled to relief. *Id.* at 6, 374 S.W.3d at 121. Rules 12(b)(6) and 8(a)(1) must be read together in testing the sufficiency of a complaint. *Id.* at 6, 374 S.W.3d at 121.

All of appellants' claims that might have passed muster under Arkansas Rule of Civil Procedure 12(b)(6) are barred by claim preclusion because appellants could have raised them in the first action. While appellants could have brought claims for events that arose after the first action was dismissed, especially in regard to the foreclosure sale set for July 7, 2011, without being barred by *res judicata*, they did not. Although the complaint stated that a sale was set for July 7, 2011, it failed to allege any specific facts setting forth appellees' actual breaches of their



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obligations in the time period after the first orders of dismissal and asserted only broad legal conclusions.² As discussed above, Arkansas law requires fact pleading, and a complaint must state facts, not mere conclusions, in order to entitle the pleader to relief. We therefore affirm on the basis of *res judicata*.

Affirmed.

GLADWIN, C.J., and PITTMAN, J., agree.

Crawley, DeLoache & Hargis, PLLC, by: *Joel G. Hargis*; and *The Cruz Law Firm, PLC*, by: *Kathy A. Cruz*, for appellants.

Wright, Lindsey & Jennings LLP, by: *Judy Simmons Henry* and *David L. Jones*, for appellees.

²Appellants stated: “As of the date this Complaint was filed, [appellants’] home is set to be sold on July 7, 2011 at 2:00 p.m. in Little Rock, Arkansas.”