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**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A10-342**

Eric R. Meisel, et al.,  
Respondents,

vs.

Lawyers Title Insurance Corporation,  
a subsidiary of Land America Insurance Agency, Inc.,  
Appellant.

**Filed December 14, 2010  
Reversed  
Hudson, Judge**

Hennepin County District Court  
File No. 27-CV-08-1397

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Considered and decided by Hudson, Presiding Judge; Ross, Judge; and Schellhas,  
Judge.

**UNPUBLISHED OPINION**

**HUDSON**, Judge

Appellant title insurance company challenges the district court's judgment  
(1) declaring that respondents, who purchased residential property containing undisclosed

burial mounds, were entitled to coverage under their title-insurance policy with appellant and (2) awarding damages for the property's loss in value based on the presence of the mounds. Because we conclude that the district court erred as a matter of law by declining to admit evidence of an arbitrator's decision, which awarded respondents damages for their entire claim, and in ruling that collateral estoppel did not apply, we reverse.

## **FACTS**

In December 2004, respondents Eric Meisel and Amy Yanik Meisel signed a purchase agreement to buy a home located on a tract overlooking Lake Minnetonka in Mound. Respondents purchased the property after speaking to one of the sellers, who had lived there for approximately 33 years. Respondents agreed to purchase the property for \$680,000 based on an appraisal conducted on their behalf. A real-estate agent for Coldwell Banker Burnet acted as a dual agent for the respondents and the sellers. The real-estate agent also arranged for title insurance to be ordered from appellant Lawyers Title Insurance Company through Burnet Title, a subsidiary of Coldwell Banker Burnet, which was acting as appellant's agent.

In connection with the purchase agreement, respondents, the sellers, and the real-estate agent, representing Coldwell Banker Burnet, signed an optional "Arbitration Disclosure" and "Residential Real Property Arbitration Agreement." The agreement provided that "[a]ny dispute between the . . . parties . . . about or relating to the physical condition of the property covered by the purchase agreement . . ., including claims of fraud, misrepresentation, warranty and negligence, shall be settled by binding

arbitration.” The agreement stated that it was a “legally binding contract between buyers, sellers, and licensees.” It added, “[i]f you desire legal advice consult a lawyer.”

At closing, respondents received a revised and “marked-up” title commitment relating to the title policy, which, in relevant part, deleted the standard survey exclusion. A week later, they received the title-insurance policy. Respondents ordered a plat and inspection of the property in connection with the sale, but they did not order a survey.

Shortly after respondents purchased the home, they decided to excavate the hill next to their garage to repair a wall. Eric Meisel spoke with the City of Mound development director about obtaining a building permit for the excavation. She told him that she recollected that there may be burial mounds on the property and did not grant respondents a building permit.

Respondents then contacted a representative from the Minnesota State Archaeologist’s office about the possible presence of burial mounds, and the state archaeologist, Scott Anfinson, visited the property. Anfinson informed respondents that the property contained several burial mounds, which were designated as an archeological site. He declared the largest mound to be part of a cemetery under Minn. Stat. § 307.08 (2004). Anfinson stated that the cemetery was of Indian affiliation and that the Minnesota Indian Affairs Council (MIAC) had jurisdiction relating to the removal of any human remains. He suggested that respondents note the presence of the cemetery on their deed. The state archaeologist’s office later authenticated the burial mounds and provided a drawing that showed the presence of approximately eight mounds on the

property. Respondents then commissioned a survey, which noted the presence of a large mound on the property.

Respondents submitted a claim in binding arbitration against the real-estate agent, Coldwell-Banker Burnet, and the seller for damages resulting from the presence of the mounds. At a hearing before an arbitration panel, the real-estate agent and Coldwell-Banker Burnet's representative testified that they were unaware of any burial mounds on the property. The seller also claimed that he was not aware of the mounds and that he sold the property with whatever conditions were present. A long-time neighbor, however, testified that, through contacts and conversations over the years, he believed that the seller was aware of the mounds.

The arbitration panel issued its award, determining that the seller, but not the other parties, knew about the mounds and failed to disclose them to respondents. The panel stated that two appraisals from the time of sale had valued the property at \$680,000 and \$600,000, and respondents had paid \$680,000. The panel noted that respondents submitted an expert appraisal indicating that the property's actual value at the time of sale, with the presence of the mounds taken into account, was \$390,000, and that respondents claimed \$290,000 for the undisclosed presence of the mounds. The panel determined that "[t]he amount of damages allowed on the claim is \$40,000 against [the seller] . . . for the entire claim of the Claimant," and determined in addition that the seller should pay a portion of the respondents' arbitration fees.

Approximately two months after submitting the claim for binding arbitration, respondents also filed a claim on their title-insurance policy with appellant to recover

damages for the property's reduced value resulting from the presence of the mounds. Appellant denied the claim, alleging that, although the impact of the mounds might affect the value of the property, it did not constitute a title defect or other covered risk and did not affect marketable title. Appellant asserted that the consequence of the presence of the mounds resulted from the exercise of governmental police power, the coverage of which was expressly excluded under the policy; that the mounds were not noted in land title records, which would have provided constructive notice for the purpose of title examination; and that the arbitration award fully compensated respondents for their loss.

Respondents then filed suit in district court, seeking a declaratory judgment that the mounds' presence affected marketability of title and that the resulting loss fell within the covered risks of their title policy. They further alleged breach of their title-insurance contract with appellant and sought damages based on their remaining uncompensated losses.

The district court held a court trial. Appellant moved in limine, in relevant part, to exclude evidence of respondents' damages on the basis that the arbitration award collaterally estopped further consideration of that issue. The district court denied the motion and excluded evidence of the arbitrator's decision.

The district court issued its findings of fact, conclusions of law, and judgment, declaring that respondents' losses were covered under the title-insurance policy. The district court determined that respondents' claim fell within at least two of the policy's explicitly covered risks: that someone else had a right to limit their use of the property and that title was unmarketable. The district court also concluded that the policy's

governmental-regulation exclusion did not apply because respondents had purchased the policy based on the title commitment provided at closing, which did not disclose this exclusion. The district court also noted that the government-regulation exclusion did not apply to matters disclosed in “public records” and concluded that respondents were entitled to coverage based on their reasonable expectation that “public records” included the state archeologist’s records relating to burial mounds. The district court also concluded that respondents were entitled to coverage under the doctrine of reasonable expectations because the policy deleted the standard survey exclusion, and based on that deletion, respondents reasonably expected that they would not need to purchase a survey, which would have disclosed the presence of the mounds.

The district court ordered that respondents recover damages of \$250,000, the difference between the amount respondents paid for the property and the appraisal of the property with the mounds included, less the amount of the arbitration award. The district court denied appellant’s motion for a new trial or amended findings on the issue of the evidentiary exclusion of the arbitrators’ award. This appeal follows.

## **D E C I S I O N**

Appellant challenges the district court’s decision to deny its motion for a new trial, arguing that the court erred by failing to admit evidence of the prior arbitration award because that award had collateral-estoppel effect on the issue of respondents’ damages relating to the presence of the burial mounds. This court reviews the district court’s decision on whether to admit evidence for an abuse of discretion, unless that decision is based on a legal error. *Kroning v. State Farm Auto. Ins. Co.*, 567 N.W.2d 42, 45–46

(Minn. 1997). Generally, the district court also has discretion as to whether to grant a new trial. *Halla Nursery, Inc. v. Baumann-Furrie & Co.*, 454 N.W.2d 905, 910 (Minn. 1990). But if the district court’s decision to deny a new trial rests solely on a matter of law, a de novo standard of review applies. *Id.*

The doctrine of collateral estoppel precludes parties from relitigating issues litigated and determined in a prior lawsuit. *Nw. Nat’l Life Ins. Co. v. Cnty. of Hennepin*, 572 N.W.2d 51, 53–54 (Minn. 1997). Whether collateral estoppel applies presents “a mixed question of law and fact that we review de novo.” *Hauschildt v. Beckingham*, 686 N.W.2d 829, 837 (Minn. 2004).

For collateral estoppel to apply

- (1) the issue must be identical to one in a prior adjudication;
- (2) there was a final judgment on the merits;
- (3) the estopped party was a party or was in privity with a party to the prior adjudication; and
- (4) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

*Id.* (quotation omitted). Here, the district court concluded that “the first and last prongs of the . . . four-part analysis” for collateral estoppel were not met. The district court determined that because the arbitration panel did not take account of the terms and conditions of respondents’ contract with appellant, the damages issue was not identical to that in the arbitration proceeding and respondents did not have a full and fair opportunity to litigate the issue of title-insurance coverage. The district court also appeared to conclude that the third requirement for the application of collateral estoppel was not met, stating that the parties involved in the arbitration were not the parties to this lawsuit.

We disagree with the district court's analysis on all three factors as a matter of law. The Minnesota Supreme Court has concluded that when a plaintiff engaged in binding arbitration with his uninsured-motorist carrier with respect to his personal-injury claim and the arbitrators assessed the amount of his damages, the plaintiff was collaterally estopped from litigating the damages issue in a subsequent personal-injury action against the owner and driver of the other vehicle. *Aufderhar v. Data Dispatch, Inc.*, 452 N.W.2d 648, 652–53 (Minn. 1990). The court concluded that, when the party to be estopped had been the claimant in the arbitration proceeding, it was immaterial that the later defendants had not been parties to that proceeding. The court also noted that the plaintiff had a full and fair opportunity to present damages evidence before the arbitration panel. *Id.* at 652–53. Following *Aufderhar*, this court has also concluded that, when plaintiffs entered into binding arbitration with a tortfeasor's automobile-liability insurance company and the arbitrator determined the amount of damages plaintiffs suffered, the plaintiffs were estopped from claiming a greater amount of damages in a subsequent action to recover underinsured benefits from their insurance carrier. *Butzer v. Allstate Ins. Co.*, 567 N.W.2d 534, 536 (Minn. App. 1997).

Here, respondents raised an issue identical to the issue determined in the arbitration proceeding: the amount of damages to which they are entitled, based on the presence of the burial mounds on their property. After considering the evidence, the arbitrators determined that respondents were entitled to damages of \$40,000 for their claim. Although the arbitration panel awarded damages based on a fraud theory of liability rather than the contract theory asserted here, an equivalent measure of damages



applies. *See Peterson v. Johnson*, 254 N.W.2d 360, 362 (Minn. 1977) (stating that measure of damages recoverable in fraud action relating to sale of real property is amount paid, less fair market value of property); *see generally* 12 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance 3d* § 185:84 (2005) (stating that measure of damages in action to recover under title-insurance policy based on encumbrance not excepted from coverage, when encumbrance cannot be removed, is diminution in property's market value). That appellant was not also a party to the arbitration proceeding does not affect the application of collateral estoppel to the damages issue in this action. *See Aufderhar*, 452 N.W.2d at 652.

Further, the arbitration proceeding provided respondents with a full and fair opportunity to litigate the amount of their damages. In *Aufderhar*, the supreme court concluded that the claimant received a full and fair opportunity to litigate damages when the same attorney represented him at arbitration and at trial, legal procedural and evidentiary rules governed the arbitration proceeding, experienced attorneys arbitrated the case, and the claimant did not assert that he was denied the opportunity to present damages evidence. *Id.* Similarly, respondents were represented at the arbitration proceeding by the same attorney who represented them at trial. The arbitration panel consisted of two attorneys and a licensed architect. And the panel took testimony from respondents' witnesses, including their appraiser, who presented evidence on the fair market value of the property at the time of sale, as diminished by the presence of the mounds.

We conclude that all of the elements required for collateral estoppel are present, and the arbitrator's damage award precludes relitigation of respondents' damages in this action. *See Aufderhar*, 452 N.W.2d at 653 (concluding that collateral estoppel precluded relitigation of damages amount at trial).

In denying appellant's motion for a new trial, the district court concluded that even if erroneous, its failure to admit the arbitration award into evidence was not substantially prejudicial because that award did not fully compensate respondents for their damages. *See Kroning*, 567 N.W.2d at 46 (stating that "[e]ntitlement to a new trial on the grounds of improper evidentiary rulings rests upon the complaining party's ability to demonstrate prejudicial error") (quotation omitted). On appeal, however, respondents do not dispute that the arbitration award amounted to a final determination on the merits of their damages claim. *See Aufderhar*, 452 N.W.2d at 651 (stating that reviewing court affords finality to an arbitration award "as to both facts and the law"). The arbitration panel conclusively determined that respondents were entitled to recover only \$40,000 "for the[ir] entire claim." The failure to admit evidence of the arbitration award substantially prejudiced appellant by foreclosing its argument that the arbitrator's determination of damages collaterally estopped further consideration of the issue.

If the application of collateral estoppel precludes an action, a reviewing court need not reach additional issues. *Villarreal v. Indep. Sch. Dist. No. 659*, 520 N.W.2d 735, 739 (Minn. 1994). Because we conclude that the district court committed reversible error by failing to admit evidence of the arbitrators' award, which collaterally estopped

relitigation of respondents' damages, we do not address the additional issues raised in this appeal.

**Reversed.**