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Summary of Schuck v. Signature Flight Support, 126 Nev. Adv. Op. No. 42

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Schuck v. Signature Flight Support, 126 Nev. Adv. Op. No. 42 (November 4, 2010)[1]
CIVIL PROCEDURE – SUMMARY JUDGMENT

Summary

An appeal from a district court's decisions: (1) granting summary judgment against the plaintiff; (2) awarding unpaid fees and costs to plaintiff's attorneys; and (3) denying plaintiff's 60(b) motion for relief from judgment.

Disposition/Outcome

The Court affirmed the summary judgment, agreeing that the plaintiff had failed to support his opposition to the motion for summary judgment with evidence sufficient to defeat the motion. Secondly, the Court reversed the award for unpaid fees and costs granted to plaintiff's former lawyers, concluding that such an award was improper in light of the surrounding circumstances of the litigation. Finally, the Court rejected the appeal on the motion for relief from judgment, except to the extent that it reversed the award of attorney fees and costs.

Factual and Procedural History

Bradley Schuck ("Schuck") left his twin-engine Cessna at the Signature Flight Support ("SFS") facility at McCarran Airport for a week. Upon Schuck's return, the plane's engine and rudder allegedly had been damaged and the dipstick was missing. Schuck sued SFS and, after some time, SFS moved for summary judgment, which the district court granted.

Prior to summary judgment, Schuck's original attorneys filed a motion to withdraw and for entry of judgment against Shuck for unpaid attorney's fees and costs. Schuck then filed a fee dispute with the State Bar of Nevada. Without knowledge of the filed dispute, the district court subsequently entered a personal, executable judgment against Schuck for $70,014.09. After the district court granted SFS's summary judgment motion, Schuck filed a NRCP 60(b) motion contesting the award for fees and costs. The district court denied this motion for relief.

Schuck appealed the summary judgment on grounds that the existence of a previously un-argued bailment relationship. He also argued that specific evidence included in SFS's motion for summary judgment created genuine issues of material fact. Lastly, Schuck appealed the district court's judgment for attorneys' fees and denial of the 60(b) motion because of the fee dispute.

Discussion

Summary judgment

The Court found that both of Schuck's arguments failed because he did not argue them in the district court. Despite de novo review, the general rule is that "[a] point not urged in the trial court…is deemed to have been waived and will not be considered upon appeal."[2] The Court

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[2] Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981).

noted that SFS provided pinpoint cites and demonstrated why the facts supported summary judgment as a matter of Nevada law. In contrast, Schuck's response contained broad allegations that issues of fact existed but provided no specific examples or substantive law.

Based on the arguments presented to the district court, the Court held that the district court properly granted summary judgment. Distinguishing *Alamo Airways, Inc. v. Benum*,[3] the Court held that Schuck could not rely on appeal on an argument "inconsistent with or different from the one raised below."[4] To allow Schuck to present this argument on appeal would be unfair because neither SFS nor the district court had an opportunity to examine it previously.

Further, the bailment issue was irrelevant because Schuck did not dispute specific evidence in his response as required by NRCP 56(e).[5] The Court agreed with the Ninth Circuit[6] that requiring the district court to search the record on behalf of the adverse party is inherently unfair. Finally, the Court held that the "slightest doubt" standard,[7] upon which Schuck's original opposition relied, was no longer sufficient in light of *Wood v. Safeway*.[8]

Award for attorney fees and motion for relief from judgment

Schuck's former attorneys relied upon NRS 18.015[9] to defend the award. The Court observed that the charging lien created by the statute must attach to money or property recovered in suit.[10] In light of the unresolved fee dispute, the Court held that the district court should not have awarded a personal judgment against Schuck prior to a decision on his claim against SFS, as Schuck did not consent to early adjudication of the charging lien.[11] The Court also held that the district court was in error when it denied Schuck's motion for relief from judgment because Schuck's claim was then valueless and the charging lien could not attach to anything.

Conclusion

On appeal of a summary judgment, the Court will not permit arguments that the adverse party did not make in opposition to the motion in the district court. Further, the adverse party has a responsibility to dispute facts presented by the moving party specifically and cannot wait until appeal to provide the court with specific disputed points. Finally, a court cannot reduce a NRS 18.015 charging lien to a judgment prior to the disposition of the associated suit when a fee dispute is ongoing.

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[3] 78 Nev. 384, 374 P.2d 684 (1962).
[4] Powers v. Powers, 105 Nev. 514, 516, 779 P.2d 91, 92 (1989).
[5] NEV. R. CIV. P. 56(e) ("[T]he adverse party's response…must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.").
[6] *See* Carmen v. S.F. Unified Sch. Dist., 237 F.3d 1026, 1031 (9th Cir. 2001).
[7] *See* Posadas v. City of Reno, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993).
[8] 121 Nev. 724, 730-31, 121 P.3d 1026, 1030 (2005).
[9] NEV. REV. STAT. § 18.015 allows a charging lien to be placed upon a claim that a client entrusted to an attorney for suit.
[10] *See* NEV. REV. STAT. § 18.015(3) (2007).
[11] The Court distinguished this case from *Earl v. Las Vegas Auto Parts*, 73 Nev. 58, 307 P.2d 781 (1957), which upheld the early adjudication of a charging lien claim, where the district court previously deferred determination of the amount until after the original suit concluded.