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Estate of Adams v. Fallini, 132 Nev. Adv. Op. 81 (December 29, 2016)

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CIVIL PROCEDURE: MOTION TO SET ASIDE FINAL JUDGMENT; FRAUD

Summary

The Court considered whether a party may appeal a district court's order granting an NRCP 60(b) motion to set aside a final judgment for fraud upon the court. The Court held the district court's order interlocutory and may not be appealed until a final judgment is entered.

The Court held that the district court was not barred from considering the NRCP 60(b) motion and the district court did not abuse its discretion in granting relief based on fraud upon the court.

Background

Appellant Michael Adams hit respondent Susan Fallini's cow while driving on a piece of highway assigned as open range and died.² Adam's estate (the Estate) sued Fallini for negligence. Fallini's initial counsel filed an answer arguing that Fallini could not be held liable under Nevada law because the accident occurred on open range.³ However, Fallini's initial counsel subsequently failed to participate in the case.⁴ The Estate submitted discovery requests to Fallini's counsel, including a request for Fallini to admit that her property was not located on open range. Fallini's counsel failed to respond to any of the discovery requests. The Estate's counsel filed an unopposed motion for partial summary judgment arguing that Fallini admitted that her property was not located on open range. The district court granted the motion.

After Fallini discovered that her counsel failed to respond to discovery requests, she obtained new counsel and sought reconsideration of the district court's prior orders. The district court denied reconsideration, struck Fallini's answer, and entered default judgment for the Estate. The Court affirmed the judgment, but remanded in regards to damages.⁵ On remand, the district court entered a final judgment against Fallini for \$1,294,041.85.

Fallini filed a NRCP 60(b) motion arguing that the district court should set aside the judgment because the Estate's counsel committed a fraud upon the court when he sought and relied on the admission that the accident did not occur on open range. The district court granted the motion.

Fallini filed a motion for final judgment arguing that NRS § 568.360 established a complete defense to the Estate's claims. The district court granted the motion and dismissed the action, and the Estate now appeals.

¹ By Krystina Viernes.

² The Nevada Highway Patrol's accident report indicated that the accident on open range; NEV. REV. STAT. § 568.355 (2015) (defines "open range" as "all unenclosed land outside of cities and towns upon which cattle, sheep or other domestic animals by custom, license, lease or permit are grazed or permitted to roam.").

³ See NEV. REV. STAT. § 568.360 (2015) (An owner of animals has no duty to prevent the animals from entering a highway traversing open range and will not be subject to liability for injuries resulting from a motor vehicle collision with the animals on any such highway).

⁴ Fallini's initial counsel has been disbarred.

⁵ *Fallini v. Estate of Adams*, No. 56840 2013 Nev. Unpub. LEXIS 447 (March 29, 2013).

Discussion

The district court's order granting Fallini's NRCP 60(b) motion for fraud upon the court was interlocutory and not appealable.⁶ Therefore, the NRCP 60(b) order merged into the final judgment.⁷ The Court has jurisdiction to consider challenges to the district court's NRCP 60(b) order in this appeal from the final judgment and the district court properly addressed the merits of Fallini's NRCP 60(b) motion.

The district court did not abuse its discretion in granting Fallini's NRCP 60(b) motion. When Fallini's counsel abandoned the case, the Estate's counsel seized on that abandonment to create a false record and presented that record to the district court as basis for judgment. Together, these acts and omissions merited relief. The Court held that counsel may not rely on the deemed admission of a known false fact to achieve a favorable ruling.

Despite clear indication that the accident occurred on open range, the Estate's counsel propounded his request for admissions, sought partial summary judgment, and applied for default judgment all on the false premise that the accident did not occur on open range. Therefore, the district court did not err when it found the Estate's counsel knew or should have known that the accident occurred on open range when he used the admission to secure a judgment for the Estate.

Counsel's fraudulent conduct prevented the district court from properly adjudicating the case. The Court held the Estate's counsel's duty of candor required him to refrain from relying on opposing counsel's default admission that the accident did not occur on open range, when he knew or should have known that it was false, and that the district court did not abuse its discretion in finding the Estate's counsel committed a fraud upon the court when he failed to fulfill his duties as an officer of the court with candor.

Conclusion

The Court affirmed the district court's order granting NRCP 60(b) relief and dismissing the action.

⁶ See 11 Charles Man Wright & Arthur R. Miller, *Federal Practice and Procedure* §2871 (3rd ed. 2016) (stating that "(a)n order granting a motion under [federal] Rule 60(b) and ordering a new trial is purely interlocutory and not appealable").

⁷ See *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 897 (9th Cir. 2001) (noting that "a party may appeal interlocutory orders after entry of final judgment because those orders merge into that final judgment"); see also *Consol. Generator-Nev., Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998) (noting that this court may review an interlocutory order in the context of an appeal from a final judgment).