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Summary of *Frei v. Goodsell*, 129 Nev. Adv. Op. 43

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ISSUE PRECLUSION – REQUIREMENTS TO PRECLUDE A PREVIOUSLY
LITIGATED ISSUE

PAROL EVIDENCE RULE – INTRODUCING EXTRINSIC EVIDENCE TO ALTER
UNAMBIGUOUS OBLIGATIONS OF A TRUST

Summary

Appeal from a district court judgment on a jury verdict in a legal malpractice action claiming issue preclusion and offering extrinsic evidence of intent regarding obligations of a trust. The Court made clear the requirements for issue preclusion and also concluded that a party cannot introduce extrinsic evidence of a testator's intent to create ambiguity or otherwise alter the plain language of the trust. The Court affirmed the district court's judgment.

Disposition/Outcome

A party must show the litigation of an issue of fact or law was necessary to the judgment in the earlier suit in order to preclude relitigation of the same issue. In addition, the parol evidence rule bars a party from introducing extrinsic evidence that would create ambiguity or otherwise alter the obligations in the unambiguous language of a trust.

Factual and Procedural History

Respondent Goodsell is an attorney who prepared documents for the signature of appellant Frei at the instruction of Frei's agent. Upon execution, the documents transferred over \$1 million of Frei's assets into his wife's trust. After his wife's death, Frei sought to void the documents, arguing that he did not understand the impact of what he was signing and that the documents did not accurately reflect his intent. During litigation, Frei filed a motion to disqualify Goodsell from representing Frei's agent, arguing that an attorney-client relationship existed because Goodsell prepared documents for Frei's signature. The district court granted Frei's motion to disqualify Goodsell based on a conflict of interest.

Subsequently, Frei brought the underlying legal malpractice action against Goodsell, arguing breach of standard of care by failing to verify Frei's intentions before preparing the documents for his signature. Frei argued that the doctrine of issue preclusion should prevent Goodsell from denying the existence of an attorney-client relationship in light of the district court's order disqualifying Goodsell from the trust action. The district court denied Frei's motion. In addition, Goodsell raised a parol evidence objection in response to questions regarding Frei's intent in executing the documents. Goodsell argued that each document was clear and unambiguous, such that

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Frei could not testify to contradict the plain meaning of its contents. The district court agreed and found in favor of Goodsell. Frei appealed the decision.

Discussion

Application of the doctrine of issue preclusion

The Court reviewed de novo whether the doctrine of issue preclusion applies to preclude a party from relitigating legal issues that were addressed in a previous action. In order for issue preclusion to apply, four elements must be met.² Focusing on the fourth factor, whether the issue was actually and necessarily litigated, the Court concluded that while the issue of an attorney-client relationship was actually litigated in the previous trust action,³ it was not necessarily litigated.⁴

The resolution of the prior trust action was not dependent on whether Goodsell had an attorney-client relationship with Frei. Therefore, it was not necessarily litigated, which rendered the doctrine of issue preclusion inapplicable. Accordingly, the district court did not err in denying Frei's motion in limine or by allowing the issue of an attorney-client relationship to be determined by the jury.

Parol evidence rule

The Court limited discussion on the parole evidence issue to the arguments that Frei raised on appeal and assumed without deciding that the parol evidence rule was available. Extrinsic or parol evidence is not admissible to contradict or vary the terms of an unambiguous written instrument, because all prior negotiations and agreements are considered merged into the final instrument.⁵ Frei conceded that all of the documents were unambiguous on their face, but he argued that evidence of intent was essential for proving that the documents did not meet his objectives. However, Frei was unable to support his argument with valid authority, and the court rejected his argument.

Alternatively, Frei argued that the parol evidence rule should not have applied because courts routinely admit extrinsic evidence of a testator's intent in the context of estate planning. The court noted, however, that such evidence is not admissible "for the purpose of proving the meaning the testator attributed to specific provisions of an

² Specifically, "(1) the issue decided in the prior litigation must be identical to the issue presented in the current action; (2) the initial ruling must have been on the merits and have become final; (3) the party against whom the judgment is asserted must have been a party or in privity with a party to the prior litigation; and (4) the issue was actually and necessarily litigated." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1052, 194 P.3d 709, 711 (2008) (internal quotations and punctuation omitted).

³ *cf. In re Sandoval*, 126 Nev. ___, ___, 232 P.3d 422, 424–25 (2010) (concluding that a case had not been "actually. . . litigated" without knowledge and participation of both parties and findings of fact established by evidence); see *RESTATEMENT (SECOND) OF JUDGMENTS* § 27 cmt. d (1982) ("When an issue is properly raised. . . and is submitted for determination, . . . the issue is actually litigated. . .").

⁴ *Univ. of Nev. v. Tarkanian*, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994) (providing that only where "the common issue was . . . necessary to the judgment in the earlier suit," will its relitigation be precluded) (emphasis added).

⁵ *Kaldi v. Farmers Ins. Exch.*, 117 Nev. 273, 281, 21 P.3d 16, 21 (2001).

admitted will.”⁶ Accordingly, Frei’s argument was unpersuasive because Frei did not argue that he lacked testamentary intent while signing the unambiguous documents or failed to understand its effect at the time of execution. Therefore, the district court did not abuse its discretion in prohibiting extrinsic evidence.

Conclusion

The Court affirmed the district court's judgment. The district court properly refused to apply the doctrine of issue preclusion because the issue of an attorney-client relationship between Frei and Goodsell was not necessarily litigated in the previous action. The district court also did not abuse its discretion in applying the parol evidence rule.

⁶ Ohannesson v. Lambrinidou (*In re Sargavak's Estate*), 216 P.2d 850, 852 (Cal. 1950).