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Ashley C. Nikkel
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Elyousef v. O'Reilly & Ferrario, LLC, 126 Nev. Adv. Op. No. 43 (November 18, 2010)¹

CIVIL PROCEDURE – DOUBLE RECOVERY AND ISSUE PRECLUSION

Summary

An appeal from a summary judgment in a legal malpractice action.

Disposition/Outcome

The Court affirmed the district court's order of summary judgment in the respondents' favor because both the doctrines of double recovery and issue preclusion barred the appellant from recovering.

Factual and Procedural History

Bashar Ahmad Elyousef ("Elyousef") entered into a business transaction with C. Dean Homayouni ("Homayouni"), his attorney at O'Reilly and Ferrario, LLC ("O'Reilly"), resulting in Homayouni obtaining Elyousef's interest in Nevada Oil and Land Development, LLC ("NOLD"). Homayouni left O'Reilly due to a conflict of interest. Homayouni sued Elyousef, who filed a counterclaim, alleging Homayouni negligently lost his interest in NOLD. The district court found for Elyousef, awarding him \$150,000 in damages plus \$225,631 in costs and fees. Homayouni subsequently settled with Elyousef for \$50,000, plus the return of his interest in NOLD.

In Elyousef's subsequent suit against O'Reilly, the district court granted summary judgment in O'Reilly's favor on the grounds that the doctrines of double recovery and issue preclusion barred Elyousef's recovery. Elyousef appealed, maintaining neither doctrine barred him from seeking further damages.

Discussion

Standard of Review

The Court reviewed the order granting summary judgment *de novo*.² The *de novo* standard also applied to the question of whether the double recovery doctrine precluded a claim.³

Double Recovery Doctrine

Under the double recovery doctrine, a plaintiff may not recover twice for the same injury simply because he or she presents two legal theories.⁴ In *Grosjean v. Imperial Palace*,⁵ the

¹ By Ashley C. Nikkel

² Sustainable Growth Initiative Comm. v. Jumpers, LLC, 122 Nev. 53, 61, 128 P.3d 452, 458 (2006).

³ See *Morley-Murphy Co. v. Zenith Elecs. Corp.*, 142 F.3d 373, 378 (7th Cir. 1998); *Nev. Classified Sch. Emps. Ass'n v. Quaglia*, 124 Nev. 60, 63, 177 P.3d 509, 511 (2008).

⁴ 25 C.J.S. Damages § 5 (2002) (citing *Greenwood Ranches, Inc. v. Skie Constr. Co.*, 629 F.2d 518 (8th Cir. 1980)).

⁵ 125 Nev. ___, ___, 212 P.3d 1068, 1084 (2009).

Court held that the double recovery doctrine barred a plaintiff's state law tort claim following recovery on the same issues in a federal § 1983 claim. Here, the Court expressly adopted the double recovery doctrine in Nevada and held that a plaintiff can only recover *once* for a single injury, even with the assertion of multiple legal theories.

Under this doctrine, Elyousef could not recover from O'Reilly because he previously settled with Homayouni. Although Elyousef only received \$50,000 in the settlement, Homayouni also restored his controlling interest in NOLD, worth more than two million dollars. Therefore, the settlement completely satisfied the judgment and Elyousef's suit against O'Reilly did not allege any different damages.

Issue Preclusion Doctrine

Issue preclusion bars re-litigation of an issue when: (1) the issue decided in the prior litigation is identical to the issue presented in the current action; (2) the initial ruling was final and on the merits; (3) the party against whom the judgment is asserted is a party (or has privity with a party) to the prior litigation; and (4) the issue was actually and necessarily litigated.⁶

Here, Elyousef sought to re-litigate the amount of damages he sustained from the business transaction with Homayouni. First, both cases involved the same damages and injury. Second, the district court issued a final ruling on the merits in the first case, awarding damages, attorney fees and costs. Third, Elyousef was a party to the initial litigation. Finally, at trial, the district court actually and necessarily litigated the damages issue because the district court judge assigned a value to Elyousef's injury. Therefore, issue preclusion bars Elyousef from re-litigating the amount of his damages for the transaction with Homayouni.

Conclusion

Under the double recovery doctrine, a plaintiff may not recover twice for a single injury by presenting multiple legal theories.

⁶ Five Star Capital Cor. v. Ruby, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008).