5-13-2010

Summary of In Re Sandoval, 126 Nev. Adv. Op. No. 15

Amy Kominsky
Nevada Law Journal

In Re Sandoval, 126 Nev. Adv. Op. No. 15 (May 13, 2010)[1]

CIVIL PROCEDURE- EFFECT OF DEFAULT JUDGMENTS ON ISSUE PRECLUSION

Summary

This case is a certified question[2] that originates from the United States Bankruptcy Court for the District of Nevada to determine whether a default judgment entered for failure to respond to a valid complaint has issue preclusive effects.

Disposition/Outcome

The Nevada Supreme Court determined[3] that because Nevada law requires an issue to have been "actually and necessarily" litigated for issue preclusion to apply,[4] a default judgment entered in a bankruptcy proceeding where the issues are not decided on their merits will not result in issue preclusion.

Factual and Procedural History

Luis Sandoval, Respondent, was the debtor in a bankruptcy proceeding, which included a dischargeable debt from a default judgment entered against him in favor of Charles Ajuziem. The default judgment stemmed from an assault and battery charge[5] against Mr. Sandoval arising from an altercation at a soccer game in which both men were participants. The complaint was served by publication and when Mr. Sandoval failed to answer and/or appear a default judgment was entered against him. The judgment was then assigned to Leslie Howard, the appellant in this case.

Subsequent to the entry of the default judgment Mr. Sandoval declared bankruptcy and attempted to discharge the default judgment. The bankruptcy court noted that the debt would not be dischargeable if it was "for willful and malicious injury by the debtor to another entity or to the property of another entity."[6] Ms. Howard objected to the discharge of the debt claiming that the default judgment proved Mr. Sandoval had acted willfully and maliciously. However, Mr. Sandoval claims that no evidence was presented in the assault case therefore no actual findings of fact were issued in regard to his acting willfully and maliciously.

Because these facts posed an issue of first impression in Nevada, the bankruptcy court certified the question to the Nevada Supreme Court of whether the default judgment was "actually . . . litigated" within the meaning of Nevada law, such that it would preclude the debt from being discharged in a bankruptcy proceeding.

Discussion

---

[1] By Amy Kominsky.
[2] Certified Questions are entered pursuant to Nevada Rules of Appellate Procedure 5. *See also* Volvo Cars of North American v. Ricci, 122 Nev. 746, 749-51, 137 P.3d 1161, 1163-64 (2006).
[3] Per Curiam.
[4] This standard comes from Five Star Capital Corp. v. Ruby, 124 Nev. __, 194 P.3d 709 (2008).
[5] The suit included a claim for punitive damages.
[6] 11 U.S.C. § 523(a)(6) (2006).

Issue preclusion prevents relitigation of an issue decided in an earlier action even though the later cause of action is based on a different cause of action. A four factor test must be met before issue preclusion applies: (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.*[7]

This case centers on the fourth factor, whether the issue was actually and necessarily litigated.

Courts outside Nevada divide on the issue of whether a default judgment can establish issue preclusion. The majority of courts hold that a default judgment based solely on a defendant's failure to file an answer will not create issue preclusion.[8] The reasoning for these courts is that the issues under these circumstances are never "actually litigated." These courts follow the guidance of the Second Restatement of Judgments which states that determination of an issue must be essential to a final judgment in order for it to be precluded from further litigation.[9]

A minority of courts find that if a party had a fair "opportunity to litigate" and the courts makes express findings when entering a default judgment, then issue preclusion will apply.[10] This line of authority does not require the defendant's participation before issue preclusion attaches.

The Court determined that fairness to a defendant, requires an issue to be "actually litigated" before issue preclusion applies. The Court noted that there are many reasons why a defendant may not file an answer to a lawsuit, such as inconvenient forum or higher cost of litigating the suit then paying a default judgment.[11] Permitting relitigation of issues under circumstances like these do not waste judicial resources or harass the adverse party. Therefore, concerns for fairness to the defendant outweigh the burdens on the court of relitigation.

Conclusion

Nevada's issue preclusion test requires that an issue be "actually litigated" and not simply that a party had the opportunity to litigate an issue before issue preclusion applies. Where a default judgment was filed due to a defendant's failure to file an answer the issues in the case were not actually litigated and issue preclusion does not apply. Here, Mr. Sandoval did not participate in the case against him, there is no evidence that he even knew about the suit prior to the entering of the default judgment and the district court did not make specific findings of fact in the case therefore the issues were not "actually litigated" and issue preclusion does not apply.

---

[7] *Five Star*, 124 Nev. at __, 194 P.3d at 713-14 (emphasis added).
[8] *See* Arizona v. California, 530 U.S. 392, 414 (2000); Matter of Gober, 100 F.3d 1195, 1203-06 (5th Cir. 1996); U.S. v. Ringley, 750 F. Supp. 750, 759 (W.D. Va. 1990). However, these courts do not rule out the possibility of issue preclusion for default judgments based on other things than failing to file an answer, such as abusive or dilatory litigation tactics, or improper delay. Treglia v. MacDonald, 717 N.E.2d 249, 253-54 (Mass. 1999).
[9] Restatement (Second) of Judgments §27 (1982).
[10] *See, e.g.*, In Re Cantrell, 329 F.3d 1119, 1124 (9th Cir. 2003).
[11] Restatement (Second) of Judgments, section 27, comment e.