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In Re: Estate of Sarge 134 Nev. Adv. Op. 105 (Dec. 27, 2018)

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CIVIL PROCEDURE: THE CONSOLIDATION RULE

Summary

The Court overruled the consolidation rule established in *Malin v. Farmers Insurance Exchange*² and held that a final order resolving a consolidated case is immediately appealable as a final judgment, even if the other constituent cases or other cases are still pending. Accordingly, the Court held that the appeal at issue may proceed because the challenged order finally resolved one of multiple consolidated cases.

Background

Appellant estates through executrix Sarge filed a complaint for reentry onto property, contending that respondent, Quality Loan Service Corporation (QLSC) violated NRS 107.080³ when it foreclosed the aforementioned property. Additionally, appellant filed petitions to set aside the estates.

The district court consolidated the three cases and later dismissed the reentry complaint, finding the trustee obeyed the law. The appeal at issue follows the dismissal order. However, the docketing statement suggested the appeal could not move forward because the remaining claims in the consolidated cases were still pending. The Court then required appellants to show proof that the appeal could in fact move forward. Soon after, the United States Supreme Court decided *Hall v. Hall*, holding that an order resolving one of many cases consolidated is immediately appealable⁴, pursuant to FRCP 42(a).

Appellant contends that NRCP 42(a) should be interpreted the same way the United States Supreme Court interpreted FRCP 42(a) in *Hall*, arguing that NRCP 42(a) is modeled after FRCP 42(a). Moreover, appellant argues *Hall* overturned *Huene v. United States*,⁵ which is one of the cases relied on in *Mallin*.

Respondent contends that this Court is not bound by the *Hall* holding and that stare decisis requires that *Mallin* remain the applicable law. Additionally, respondents contend that the *Hall* holding is not suited for Nevada courts. Further, respondents argue that *Hall* did not overrule *Huene* and is irrelevant to this court's holding in *Mallin*.

Discussion

In *Mallin*, the court considered whether an order resolving one of multiple consolidated cases is appealable as a final judgment without finality certification under NRCP 54(b). The court answered no, reasoning that allowing an appeal before each case in the consolidation is resolved, could frustrate district court proceedings and cause duplicate efforts by the appellate court. Therefore, under the *Mallin* rule, an order that does not resolve all claims in a consolidated action,

¹ By Kaila Patrick.

² *Malin v. Framers Insurance Exchange*, 106 Nev. 606, 609, 797 P.2d 978, 980 (1990).

³ NEV. REV. STAT § 107.080 (2017).

⁴ *Hall v. Hall*, 584 U.S. ___, 138 S. Ct. 1118 (218).

⁵ *Huene v. United States*, 743 F.2d 703 (9th Cir. 1984).

is not an appealable final judgment unless it is certified pursuant to NRCP 54(b). However, the *Mallin* court did not discuss NRCP 42(a), which allows consolidation.

Prior to *Mallin*, this Court identified the ambiguity of the term “consolidation” in NRCP 42(a). Accordingly, the Court considers the history of the rule to determine its meaning. Before Nevada adopted the Nevada Rules of Civil Procedure, it allowed consolidation under Nevada Compiled Laws § 9025.⁶ The law was modeled after the Federal Rules of Civil Procedure. In fact, the language was identical to the language in FRCP 42(a).

When Nevada adopted its Rules of Civil Procedure, this Court had previously held that joinder Nevada Compiled Laws § 9025 does not make two separate suits into one and that consolidation under a rule with identical language did not create a merger in *Mikulich*.⁷ The language from Nevada Compiled Laws § 9025 remained the same in NRCP 42(a). No discussions indicated any changes in the meaning of consolidation. In fact, discussion suggested that the Nevada rules mirror the federal rules. Thus, the Court stated that it is accurate to assume that the meaning of the rule under NRCP 42(a) was consistent with the interpretation given under Nevada Compiled Laws § 9025.

The Court identified another significant issue, noting that the federal cases the court relied on in *Mallin* have been overruled. The Court was hesitant to depart from the doctrine of stare decisis, however, the Court refused to adhere to it so stringently “that the... law is forever encased in a straight jacket.”⁸ The Court reasoned that *Mallin* did not address the rule authorizing consolidation or acknowledge relevant case law, and the federal cases relied on have been overruled. Therefore, the Court held, the *Mallin* holding that consolidated cases merge into one for appellate purposes is no longer accurate. Moreover, the Court explained that the *Hall* decision is strong persuasive authority. Ultimately, the Court determined that there are significant and important reasons to depart from stare decisis in the case at hand.

Conclusion

The Court overruled its holding in *Mallin* that cases consolidated in the district court become a single case for appellate purposes. The Court further held that consolidated cases retain their separate properties and that an order resolving all claims in the consolidated cases are appealable as a final judgment under NRAP 3A(b)(1). Accordingly, the Court held that the district court order challenged in this appeal completely resolved the reentry complaint in its entirety. Thus, the order is appealable and this appeal can proceed.

⁶ NEV. COMP. LAWS § 9025 (Supp. 1943–1949).

⁷ *Mikulich v. Carner*, 68 Nev. 161, 169–70, 228 P.2d 257, 261 (1951).

⁸ *Rupert v. Stienne*, 90 Nev. 397, 400, 528 P.2d 1013, 1015 (1974).