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CIVIL PROCEDURE: INTERVENTION, CONSOLIDATION, STAY

Summary

The Court exercised its discretion to consider petitions for writ of mandamus filed by motorist and accident victim challenging the district court's order granting motorist's automobile insurer intervention in action where default judgment was entered and in victim's second action to collect on the judgment in which settlement was reached, consolidating the cases, and granting auto-insurer relief from judgment.

The Court concluded that because intervention is impermissible after final judgment, it was impermissible after default judgment was entered. However, where a settlement agreement had been reached but the court had not yet entered final judgment, intervention was permissible. The Court also concluded that consolidation was improper when an action which reached final judgment had no issues. Lastly, the Court concluded that a vacated judgment was proper when it was erroneously entered while a stay was in effect.

Background

Petitioner Gary Lewis struck then-minor Cheyenne Nalder with a vehicle in July 2007. James Nalder, Cheyenne's guardian, then brought action seeking damages. In 2008, the district court entered default judgment of \$3.5 million against Lewis after he and his insurer, United Automobile Insurance Company ("UAIC"), failed to defend the claim. UAIC believed Lewis' insurance policy at the time of the accident had expired.

In a separate proceeding between Lewis, James Nalder, and UAIC, the federal district court ruled that because the insurance contract was ambiguous, Lewis' coverage did not lapse and UAIC had a duty to defend him. However, the court only ordered UAIC to pay up to the insurance limits, and since 2008, UAIC had only paid James Nalder \$15,000.

In 2018, now-adult Cheyenne Nalder instituted a separate action on the judgment and sought \$5.6 million for the original judgment plus interest. UAIC then moved to intervene and consolidate both the first and second cases. While the motions were pending, Nalder and Lewis stipulated to a judgment in the 2018 case in favor of Nalder. The district court disapproved of the stipulation and granted UAIC's motions to intervene and consolidate both cases.

During a hearing on the consolidated cases, the district court orally stayed the proceedings in the 2018 case pending the resolution of certified questions. The district court subsequently granted the stay in a minute order. On the same day, despite the stay, Lewis filed an acceptance of an offer of judgment from Nalder, and the district court clerk entered the judgment the following day. The district court subsequently filed a written order granting the stay, and then granted UAIC relief from and vacated the judgment.

Nalder and Lewis sought a writ of mandamus directing the district court to vacate the two orders granting UAIC's intervention in the 2007 and 2018 cases. Lewis also sought a writ of

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mandamus directing the district court to vacate its order consolidating the cases, and to vacate its order granting UAIC's motion for relief from judgment. The court consolidated both petitions.

Discussion

The Court first determined whether a writ of mandamus was appropriate. While it is in the Court's discretion to entertain a writ, they are not entertained if adequate legal remedies are available to the petitioner.² Generally, orders granting intervention and consolidation can be challenged on appeal.³ However, the Court may still exercise its discretion to entertain the writ when important issues of law need clarification.⁴

Although the petitioners had a remedy by way of appeal, the Court exercised its discretion to consider the petitions because they raised important issues of law that needed clarification. In particular, the court wanted to clarify whether intervention is permissible after final judgment has been entered, as well as whether consolidating cases, where one has no pending issues, is proper.

Intervention

The Court first found that UAIC's intervention into the 2007 case was impermissible. Before trial, any person with an interest in the matter in litigation may intervene in an action.⁵ The Court had previously ruled that one cannot intervene after final judgment including default judgments and those rendered by agreement of the parties.⁶ Judgment by default was entered against Lewis in the 2007 case and intervention ten years later was therefore impermissible.

The Court rejected UAIC's argument that because the 2008 judgment had expired and was void, intervention was permissible, because a party cannot intervene to challenge the legitimacy of the judgment itself.⁷

The Court then found that UAIC's intervention into the 2018 case was permissible. The Court rejected petitioners' argument that their agreement was sufficient to bar intervention. Because the district court never entered judgment on petitioner's stipulation, the stipulation lacked the necessary effect of final judgment to bar intervention.⁸ The Court also reasoned that allowing agreements themselves to bar intervention would result in parties entering into bad-faith settlements to restrict a third party, who may be liable for the costs, from intervening.⁹

Using the same reasoning, the Court also noted that UAIC's motion to intervene, filed one month before petitioners' agreement, was timely. While NRS section 12.130 does not explicitly state whether timeliness is determined by the filing or granting of the motion, the filing of the motion is controlling because any other interpretation would permit the same bad-faith settlements

² Smith v. Eighth Jud. Dist. Ct., 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

³ See generally, e.g., Lopez v. Merit Ins. Co., 109 Nev. 553, 853 P.2d 1266 (1993); Zupancic v. Sierra Vista Recreation, Inc., 97 Nev. 187, 625 P.2d 1177 (1981).

⁴ Cote H. v. Eighth Jud. Dist. Ct., 124 Nev. 36, 39, 175 P.3d 906, 908 (2008).

⁵ NEV. REV. STAT. § 12.130 (2005).

⁶ Ryan v. Landis, 58 Nev. 253, 259, 75 P.2d 734, 735 (1938); Lopez, 109 Nev. at 556–57, 853 P.2d at 1268.

⁷ Ryan, 58 Nev. at 260, 75 P.2d at 736; Eckerson v. C.E. Rudy, Inc., 72 Nev. 97, 98–99, 295 P.2d 399, 399 (1956).

⁸ Willerton v. Bassham, 111 Nev. 10, 16, 889 P.2d 823, 826 (1995).

⁹ United States v. Alisal Water Corp., 370 F.3d 915, 922 (9th Cir. 2004).

to exclude a third party from intervening.¹⁰ Therefore, the district court was right to disapprove of Nalder's and Lewis' stipulation of judgment made while the motions to intervene were pending.

Lastly, the Court concluded that because UAIC's ability to protect its interests in the 2018 case would be greatly impaired without intervention, as an insurer is bound by a judgment it fails to defend, UAIC met the requirements of Rule 24 of the Nevada Rules of Civil Procedure.¹¹

Consolidation

The Court then determined that it was improper to consolidate the 2007 and 2018 cases because the 2007 case reached final judgment. While a court can consolidate multiple cases that involve a common question of law and fact, the rule may only be invoked to consolidate actions pending.¹² There were no pending issues in the 2007 case.

The Court rejected UAIC's argument that amending the 2008 judgment to replace James Nalder's name with Cheyenne's indicated there were pending issues. The change was ministerial and did not create any new pending issues, nor did it change the legal obligations the judgment set forth.¹³

The Court also noted that consolidating a case that had reached final judgment with a new case undermines the goal of consolidation: to promote judicial efficiency.¹⁴

Relief from judgment

Lastly, the Court determined that the district court did not err in vacating the judgment entered by the clerk after Lewis filed an acceptance of Nalder's offer of judgment. The district court is allowed to relieve a party from judgment for mistake, and the judgment was entered while the case was stayed.¹⁵

The Court rejected petitioner's argument that the judgment should not be vacated, since it was entered before the written stay was filed, because the judgment was entered after a minute order granting the stay was filed. The Court reasoned that although, generally, a court's oral pronouncements are ineffective, oral orders dealing with administrative or emergency matters, which restrict a party from gaining tactical or procedural advantages, are enforceable.¹⁶ The Court concluded that because a stay operates on the proceeding itself and suspends the authority to act, a minute order granting a stay operates like an administrative or emergency order, and is valid.¹⁷

¹⁰ See NEV. REV. STAT. § 12.130(1)(a) (2005).

¹¹ See Nev. R. Civ. P. r. 24(a)(2) (2005).

¹² Nev. R. Civ. P. r. 42(a); Pan Am. World Airways, Inc. v. U.S. Dist. Ct., 523 F.2d 1073, 1080 (9th Cir. 1975).

¹³ See Campos-Garcia v. Johnson, 130 Nev. 610, 612, 331 P.3d 890, 891 (2014).

¹⁴ See Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 852, 124 P.3d 530, 541 (2005).

¹⁵ Nev. R. Civ. P. r. 60(b)(1) (2005).

¹⁶ Millen v. Eighth Jud. Dist. Ct., 122 Nev. 1245, 1251, 148 P.3d 694, 698 (2006); State, Div. of Child & Family Servs. v. Eighth Jud. Dist. Ct., 120 Nev. 445, 455, 92 P.3d 1239, 1246 (2004).

¹⁷ Nken v. Holder, 556 U.S. 418, 428–29, 129 S.Ct. 1749, 1757–58 (2009).

Conclusion

The Court granted in part and denied in part the petitions.

The Court concluded that district court erred in granting UAIC intervention in the 2007 case because intervention after final judgment was impermissible. However, the order granting intervention in the 2018 case was proper. The Court also found that the district court wrongly consolidated the two cases because the 2007 case reached final judgment, and therefore had no pending issues. Finally, the Court found that district court properly vacated the erroneously entered settlement judgment because the minute order granting the stay was effective.