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Willick v. Dist. Ct. (Sanson), 138 Nev., Adv. Op. 19 (Mar. 31, 2022)

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CIVIL: THE NEVADA SUPREME COURT REAFFIRMS THE ADVANCED-STAGE EXCEPTION

Summary

The Petitioners are estopped from filing their notice of voluntary dismissal under NRCP 41(a)(1)(A)(i) because they had waited four years before filing their notice of voluntary dismissal, and the Respondents had incurred significant litigations costs. The Petitioners had triggered the advanced-stage exception to NRCP 41(a)(1)(A)(i). Accordingly, the Nevada Supreme Court held that the district court did not abuse its discretion by vacating the Petitioners' notice of voluntary dismissal.

Background

Willick and Willick Law Group (“the Petitioners”) sued the Respondents, alleging that the Respondents made defamatory statements against the Petitioners online. The Respondents moved to dismiss the suit per Nevada’s anti-SLAPP (Strategic Lawsuits Against Public Participation) statute under NRS 41.440.² In order to dismiss, NRS 41.440 requires a two-step process, requiring the moving party first to demonstrate that the statements published concerned matters of public interest and were made in good faith and then second to demonstrate a probability of prevailing on the claim. The district court denied the motion, finding that the Respondents had not met their burden on the first step. The Respondents appealed. The Nevada Supreme Court reversed and remanded, finding that the Respondents had in fact met their burden under step one of the anti-SLAPP analyses and directing the district court to consider step two.³

Upon remand, the parties attempted mediation, which failed. However, before the district court considered step two, the Petitioners filed a notice to voluntarily dismiss their complaint under NRCP 41(a)(1)(A)(i). NRCP 41(a)(1)(A)(i) provides that a Petitioner may dismiss an action without a court order by filing a notice of dismissal before the opposing party either files an answer or a motion for summary judgement. The district court vacated the notice, finding that (1) an anti-SLAPP motion was the functional equivalent of a motion for summary judgement under NRCP 41(a)(1)(A)(i), and (2) a plaintiff cannot voluntarily dismiss the case after the proceedings reached an advanced stage. The Petitioners filed a petition for writ of mandamus and prohibition, asking the Nevada Supreme Court to vacate the district court’s order.

Discussion

Here, the Nevada Supreme Court first had to determine whether it would consider a writ of mandamus, as such relief is “an extraordinary remedy that is only available if a petitioner does not have a ‘plain, speedy, and adequate remedy in the ordinary course of law.’”⁴ The Court

¹ By Samuel Holt.

² See NEV. REV. STAT. 41.660.

³ *Veterans in Politics Int’l, Inc. v. Willick*, No 72778, 2020 WL 891152 (Nev. Feb. 21, 2020) (Order Reversing and Remanding).

⁴ *In re Raggio Family Tr.*, 136 Nev. 172, 175, 460 P.3d 969, 972 (2020) (quoting NEV. REV. STAT. 34.330).

determined that the case presented a potentially significant, recurring question of law – whether an anti-SLAPP motion is equivalent to a summary judgement motion so as to preclude a voluntary dismissal of a complaint.⁵ Accordingly, the Court exercised its discretion in entertaining the Petitioners’ writ.

The Court first determined that the anti-SLAPP motion was not the functional equivalent of a motion for summary judgement under NRCP 41(a)(1)(A)(i). Thus, the district court’s first justification for vacating the Petitioners’ voluntary dismissal was not appropriate.

However, the Court then turned to the district court’s second justification – whether petitioners were estopped from voluntarily dismissing the case at such an advanced stage. The Court first acknowledged that it had previously determined that a notice of voluntary dismissal was ineffective because it was filed at an advanced stage of the proceedings.⁶ In adopting the late-stage exception to NRCP 41(a)(1)(A)(i), the Court in *Phillip A.C* had adopted the Second Circuit’s rule and reasoning in *Harvey Aluminum, Inc. v. Am. Cyanamid Co.*⁷ However, the Court acknowledged that *Harvey Aluminum* had been subject to controversy and criticism and has been limited to only “extreme” scenarios where a party is estopped from dismissing a case in order to avoid an unfavorable decision on the merits after the court has considered the evidence. The Court recognized the advanced-stage exception as a form of an equitable remedy.

The Court decided to uphold *Phillip A.C* and found that the Petitioners here were estopped from voluntarily dismissing their case under NRCP 41(a)(1)(A)(i). The Court found that the Petitioners had waited a long time – four years – before filing its notice of voluntary dismissal and the Respondents had incurred significant litigations costs. Accordingly, the Court held that the district court did not abuse its discretion by vacating the Petitioners’ notice of voluntary dismissal. The Court denied the Petitioners’ petition for a writ of mandamus and prohibition.

Conclusion

The Petitioners are estopped from filing their notice of voluntary dismissal under NRCP 41(a)(1)(A)(i) because they had waited four years before filing their notice of voluntary dismissal and the Respondents had incurred significant litigations costs. The Petitioners had triggered the advanced-stage exception to NRCP 41(a)(1)(A)(i). The Court affirmed the district court’s decision.

⁵ *Buckwalter v. Eighth Jud. Dist. Ct.*, 126 Nev. 200, 201, 234 P.3d 920, 921 (2010) (petitions challenging interlocutory appeals may be considered where there is a significant, recurring question of law).

⁶ *In re Petition of Phillip A.C.*, 122 Nev. 1284, 1290, 149 P.3d 51, 55 (2006).

⁷ 203 F2d 105, 107–08 (2d Cir. 1953).