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Willard v. Berry-Hinckley Indus., 139 Nev. Adv. Op. 52 (Nov. 23, 2023)

Cadence Ciesielski

Willard v. Berry-Hinckley Indus., 139 Nev. Adv. Op. 52 (Nov. 23, 2023)[1]

ORDERS OF DISMISSAL ARE NOT "PROSPECTIVE" FOR NRCP 60(b)(5)

Summary

In an en banc decision, the Nevada Supreme Court affirmed district court orders denying relief under Nevada Rule of Civil Procedure 60(b). The Court held that, for the purposes of NRCP 60(b)(5), orders of dismissal do not apply "prospectively" because an order of dismissal does not have continuing consequences that warrant equitable relief when dismissed with prejudice. The Court also affirmed the denial of motions under NRCP 60(b)(1) and NRCP 60(b)(6), holding that the district court did not abuse its discretion because there was substantial evidence in the record to support the findings.

Background

The motions at issue arose out of a breach of contract claim. Willard filed a complaint against Berry-Hinckley Industries in state district court. After three years, Berry-Hinckley filed a motion for sanctions and dismissal with prejudice based on Willard's failure to comply with discovery requirements and other court orders. The district court granted the motion. Willard did not appeal the sanctions.

Willard later moved to set aside the sanctions under NRCP 60(b)(1) for excusable neglect. He argued that the mental health issues of his attorney, Moquin, ultimately resulted in the dismissal of the case. The district court denied relief. Willard appealed the order denying relief claiming the district court abused its discretion in failing to address certain factors. The Nevada Supreme Court remanded the motion back to the district court, mandating an analysis of the requisite *Yochum* factors.[2] On remand, the district court again denied relief under NRCP 60(b)(1). Willard appealed the decision.

Willard filed a second motion during the pending appeal on the first motion. The subsequent motion sought relief from sanctions under NRCP 60(b)(5) or NRCP 60(b)(6). Willard sought relief under NRCP 60(b)(5) because his attorney, Moquin, admitted to violating rules of professional conduct, which Willard argued was a change in conditions that made the relief no longer equitable. Alternatively, Willard sought relief under NRCP 60(b)(6) because his attorney's admissions were new evidence that warranted relief. The district court denied the relief in turn, finding that the admissions did not constitute a significant change and that relief under NRCP 60(b)(6) was precluded by the motion for relief under NRCP 60(b)(1). Willard appealed.

The Court consolidated the appeal of the order denying relief under NRCP 60(b)(1) with the second motion filed during the pending appeal.

Discussion

The district court did not abuse its discretion in denying relief under NRCP 60(b)(1)

The first issue before the Court was whether the district court abused its discretion in denying relief under NRCP 60(b)(1). Willard argued that the district court misapplied the

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[2] *Willard v. Berry-Hinckley Indus.*, 136 Nev. 467, 471, 469 P.3d 176, 180 (2020); *see also Yochum* v. *Davis*, 98 Nev. 484, 653 P.2d 1215 (2018).

Yochum factors on remand. Berry-Hinckley contended that the district court correctly analyzed the factors.

NRCP 60(b)(1) permits a district court to "relieve a party . . . from a final judgment, order, or proceeding" under the circumstances of "mistake, inadvertence, surprise, or excusable neglect." The movant has the burden to prove the basis for the relief. To evaluate whether relief is warranted, a district court must consider the four *Yochum* factors: "(1) a prompt application to remove the judgment; (2) the absence of an intent to delay the proceedings; (3) a lack of knowledge of procedural requirements; and (4) good faith."[3] On NRCP 60(b)(1) motions, the district court must also consider Nevada's policy of "deciding cases on the merits whenever feasible."[4] The district court considered these factors and, with the exception of the first factor, found that they weighed against relief.

The Court held that the district court did not abuse its discretion in denying the motion because there was substantial evidence in the record supporting the findings, and Willard did not meet his burden to show an abuse of discretion by a preponderance of the evidence. For the first *Yochum* factor, neither party contested the district court's finding of timely filing. On the second factor, the district court found a general failure to comply with procedure resulting in delay. The Court held that there is substantial evidence in the record that supports the finding of an intent to delay the proceedings. As to the third factor, the district court found that Willard did not lack procedural knowledge because he personally attended at least one hearing and was represented by several attorneys who communicated with the district court. Willard argued that his reliance on attorney Moquin made him unaware of procedural obligations. The record does not support his contention, and therefore Willard cannot meet his burden. For the fourth factor, the district court found that Willard did not act in good faith because of intent to delay and discovery violations. Willard argued that attorney Moquin's hardships were the cause of his failures to comply, however, the Court rejected this argument due to evidence in the record that Willard retained Moquin beyond learning of the deficiencies. Therefore, the fourth factor is supported by substantial evidence, and Willard failed to meet his burden. Beyond the *Yochum* factors, the Court addressed Nevada's discretionary policy to adjudicate NRCP 60(b)(1) motions on the merits.[5] The district court found that Willard impeded that policy and consideration on the merits in failing to comply with discovery and other threshold matters. The Court held that substantial evidence warrants this decision to not apply the policy.

Because Willard failed to meet his burden as the movant, the Court held that the district court did not abuse its discretion in denying relief under NRCP 60(b)(1).

Orders of dismissal are not "prospective" and therefore do not fall within the purview of NRCP 60(b)(5) relief

The second issue before the Court was whether orders of dismissal apply prospectively for the purposes of NRCP 60(b)(5). Willard argued that the sanctions order of dismissal is no longer equitable relief because of "significant changes" in legal and factual circumstances, i.e., attorney Moquin's admission to violating rules of professional conduct. Berry-Hinckley contended that orders of dismissal cannot be set aside under NRCP 60(b)(5) because these orders do not have a "prospective" application.

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[3] *Yochum*, 98 Nev. at 486, 653 P.2d at 1216.

[4] *Willard*, 136 Nev. at 470, 469 P.3d at 179.

[5] *Huckabay Props., Inc. v. NC Auto Parts, LLC*, 130 Nev. 196, 198, 322 P.3d 429, 430–31 (2014).

Under NRCP 60(b)(5), a district court may "relieve a party from an order if 'applying [the order] prospectively is no longer equitable.'" The Court had not yet interpreted the meaning of prospective under this rule. The Court acknowledged that in areas where NRCP mirrors the Federal Rules of Civil Procedure, "rulings of federal courts interpreting and applying the federal rules are persuasive authority . . . in applying the Nevada rules."[6] With this consideration, the Court turned to the federal circuit courts of appeal. These courts hold "that a judgment or order of dismissal . . . does not apply prospectively within the meaning of Rule 60(b)(5)."[7] In *Tapper*, the Second Circuit held that an order only has a prospective application when "it is executory or involves the supervision of changing conduct or conditions."[8]

Here, the Court held that the sanctions order is not prospective because it dismissed the case with prejudice, meaning there were no continuing consequences that warranted equitable relief. While this was not the operative reasoning in the district court, the Court affirmed the lower court's decision nonetheless.

The district court did not abuse its discretion in denying Willard's request for relief under NRCP 60(b)(6)

The final issue before the Court was whether the district court abused its discretion in denying relief under NRCP 60(b)(6). Willard argued that the district court did abuse its discretion because the motion was based on willful misconduct by attorney Moquin, not the excusable neglect delineated in NRCP 60(b)(1). Berry-Hinckley contended that the motion falls within the purview of NRCP 60(b)(1), and is therefore unavailable to Willard.

NRCP 60(b)(6) allows a district court to "relieve a party from an order for 'any other reason that justifies relief.'" However, this relief is only available under "extraordinary circumstances," and it may not be sought where relief would have been appropriate under another ground within NRCP 60(b).[9]

The Court held that the district court did not abuse its discretion in denying the motion because there was substantial evidence in the record supporting the findings. The record indicates that the factual basis for the willful misconduct alleged by Willard mirrored that for excusable neglect, a ground contained in NRCP 60(b)(1). The factual basis was attorney Moquin's mental illness and its effect on the case. Because NRCP 60(b)(1) and NRCP 60(b)(6) are "mutually exclusive" and he failed to show an abuse of discretion, Willard was not eligible for relief.

Given that Willard failed to meet his burden as the movant and the relief was unavailable, the Court held that the district court did not abuse its discretion in denying relief under NRCP 60(b)(6).

Conclusion

The Court affirmed the district court's orders denying relief to Willard under NRCP 60(b)(1), NRCP 60(b)(5), and NRCP 60(b)(6). The district court's denial of relief under NRCP 60(b)(1) and NRCP 60(b)(6) was supported by substantial evidence, meaning that the court did not abuse its discretion. For purposes of NRCP 60(b)(5), the Court held that orders of dismissal do not apply prospectively. Thus, Willard was ineligible for relief under NRCP 60(b)(5).

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[6] *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 285 n.2, 357 P.3d 966, 970 n.2 (Ct. App. 2015).
[7] *Tapper v. Hearn*, 833 F.3d 166, 171 (2d Cir. 2016).
[8] *Id.* at 170–71.
[9] *Vargas v. J Morales Inc.*, 138 Nev., Adv. Op. 38, 510 P.3d 777, 781 (2022).