IN THE SUPREME COURT OF THE STATE OF NEVADA

SCOTT BURTON, A/K/A PRESTON GRIFF,
Appellant,
vs.
JOHN E. HERR, AN INDIVIDUAL; AND VALLEY HEALTH SYSTEM, LLC, D/B/A VALLEY HOSPITAL MEDICAL CENTER,
Respondents.

No. 45443

FILED

MAR 31 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY J. Richards
CHIEF DEPUTY CLERK

ORDER VACATING JUDGMENT IN PART

This is a proper person appeal from a district court order denying appellant's motion to reopen his medical malpractice case and for leave to file a second amended complaint, and dismissing with prejudice appellant's claims against respondents. Eighth Judicial District Court, Clark County; Michael A. Cherry, Judge.

On October 16, 2003, appellant filed a complaint against respondent John E. Herr, M.D., and University Medical Center (UMC). On December 31, 2003, the district court dismissed without prejudice appellant's claims against Dr. Herr, based upon its finding that appellant had failed to comply with the medical expert affidavit requirements set forth under NRS 41A.071. On April 19, 2004, the court granted UMC's motion to dismiss based on appellant's failure to respond to UMC's demand for a security of costs. This order constituted the final judgment in the case, as it resolved all remaining claims.[1]

[1]See Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000).

Almost one year later, on April 15, 2005, appellant filed a motion to reopen his case and for leave to file a second amended complaint, which he attached to his motion. Appellant's proposed second amended complaint again named Dr. Herr as a defendant, but did not name UMC; instead, it named a new defendant, Valley Health System (VHS).[2] Attached to appellant's proposed amended complaint was a letter from his treating physician, Dr. Jean Ding, "typed in affidavit form."

Dr. Herr and VHS opposed appellant's motion, arguing that appellant should be denied leave to file his second amended complaint for again failing to comply with NRS 41A.071, asserting that the "affidavit" from Dr. Ding had been forged. Dr. Herr and VHS further argued that there was no legal authority that would allow appellant to reopen his case, and requested that the court convert its prior dismissal order to an order of dismissal with prejudice. VHS also argued that appellant's malpractice claim against it was precluded because the statute of limitations had run. The court denied appellant's motion to reopen his case and for leave to file a second amended complaint, and entered an order dismissing the case with prejudice. Appellant appeals from that order.

As mentioned above, the district court's April 19, 2004 order, which dismissed appellant's complaint against the last remaining defendant in the underlying case, was a final judgment from which appellant could have appealed or, alternatively, moved to alter, amend, or

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[2]Although the proposed second amended complaint incorrectly named VHS as "Valley Medical Center, a corporation," VHS nevertheless was served with and answered the second amended complaint.

set aside.[3] Instead, a year after his case had been dismissed, appellant attempted to "reopen" his case and file a second amended complaint and an affidavit. In denying appellant's motion, the court granted respondents' request to convert the April 19 order of dismissal without prejudice to dismissal with prejudice. But, in the absence of a NRCP 59(e) motion to alter or amend, or a NRCP 60(b) motion to set aside or vacate the final judgment, the district court lacked jurisdiction to change its April 19 final order.[4] To hold otherwise would be contrary to the philosophy favoring finality of judgments.[5] Thus, although the district court properly denied appellant's motion to reopen the case and for leave to file an amended complaint, it also untimely amended its final judgment from a dismissal without prejudice to one with prejudice.[6]

Accordingly, the portion of the district court's second order dismissing with prejudice appellant's complaint is void,[7] and, therefore, we

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[3]See Greene v. Dist. Ct., 115 Nev. 391, 990 P.2d 184 (1999); Dredge Corp. v. Peccole, 89 Nev. 26, 505 P.2d 290 (1973).

[4]See Dredge, 89 Nev. at 27, 505 P.2d at 291; Greene, 115 Nev. at 393-95, 990 P.2d at 185-86; see also DCR 13(7) and EDCR 2.24(a) (both indicating that once a motion has been heard and disposed of, the same matters cannot later be reheard).

[5]Greene, 115 Nev. at 393-95, 990 P.2d at 185.

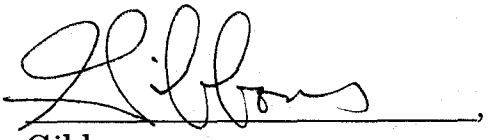
[6]See Dredge, 89 Nev. at 27, 505 P.2d at 291; Greene, 115 Nev. at 395, 990 P.2d at 186 (stating that "[o]nce a judgment is final, it should not be reopened except in conformity with the Nevada Rules of Civil Procedure"); see also NRCP 59 and 60 (specifying causes, grounds, procedures, and time limits for amending, altering, or granting relief from a judgment).

[7]See Dredge, 89 Nev. at 27, 505 P.2d at 291.

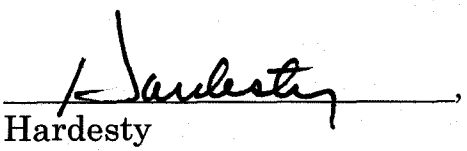
vacate that portion of the district court's order. The April 19, 2004 order of dismissal remains the final judgment.[8]

It is so ORDERED.[9]

, J.
Maupin



, J.
Gibbons



, J.
Hardesty

cc: Hon. Michael A. Cherry, District Judge
Scott Burton
Alverson Taylor Mortensen & Sanders
Robertson & Robertson
Clark County Clerk

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[8]VHS asserts that, because it was not named in the first order dismissing the action without prejudice, the district court acted within its discretion by entering the second order of dismissal with prejudice as to VHS. We disagree. The portion of the district court's second order, denying appellant's motion to reopen his case and for leave to file a second amended complaint properly disposed of any potential claim against VHS. In other words, given that the court denied appellant leave to file the second amended complaint naming VHS as a defendant, the portion of the order dismissing VHS with prejudice is superfluous, as VHS was never a party to the case.

[9]See Dredge, 89 Nev. at 27, 505 P.2d at 291; Morrell v. Edwards, 98 Nev. 91, 92-93, 640 P.2d 1322, 1324 (1982) (concluding that, even though appellant's appeal from an amended judgment was filed within thirty days of that order's entry, it was nevertheless untimely because the appeal should have been taken from the original judgment, which had plainly and properly settled the parties' legal rights and obligations with finality).