

IN THE SUPREME COURT OF THE STATE OF NEVADA

MIGUEL ANGEL RAMIREZ,  
Appellant,  
vs.  
CHRISTOPHER R. ORAM AND  
FELICIA NOVAK,  
Respondents.

No. 45561

**FILED**

**MAR 08 2006**

ORDER OF AFFIRMANCE

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

This is a proper person appeal from a district court order granting summary judgment to respondents. Seventh Judicial District Court, White Pine County; Dan L. Papez, Judge.

The underlying matter concerns a fee dispute between a client and his attorney. Appellant sued his attorney and his attorney's paralegal (respondents) for damages on a variety of theories and for declaratory relief. The suit followed an arbitrator's decision, pursuant to the parties' binding arbitration agreement, that appellant was not entitled to have his attorney fees reimbursed.

In arbitration and in the district court, appellant claimed that respondents' legal services did not justify the \$4,000 retainer fee rendered and that a portion of the retainer was used without his authorization for legal fees related to the representation of appellant's then-fiancé. Respondents filed a motion for summary judgment, which was denied, in essence, because the exhibits respondents submitted in support of the motion were not authenticated. After correcting this defect, respondents

moved the district court to reconsider its order denying their motion for summary judgment. The court granted the motion and summary judgment to respondents. Appellant appeals.

On appeal, appellant first argues that the district court erred when it granted respondents' motion for reconsideration of its order denying their motion for summary judgment. Appellant contends that respondents were required to move the court to amend the order under either NRCP 59(e) or NRCP 52(b). But those rules apply to motions made after a final judgment. An order denying a motion for summary judgment, however, is not a final judgment.<sup>1</sup> Thus, appellant's reference to these rules, and to authorities cited in this same vein, is unavailing.

In contrast, we note that the district court has inherent authority to reconsider its prior orders.<sup>2</sup> Additionally, DCR 13(7) indicates that the district court generally considers motions for reconsideration at its discretion. Having reviewed the record, we conclude that the district court did not abuse its discretion when it granted respondents' motion for reconsideration.

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<sup>1</sup>See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984).

<sup>2</sup>Trail v. Faretto, 91 Nev. 401, 536 P.2d 1026 (1975); cf. NRCP 54(b) (stating that "any order . . . which adjudicates the rights and liabilities of fewer than all the parties . . . is subject to revision at any time").

Concerning the order granting summary judgment to respondents, this court reviews that order de novo.<sup>3</sup> Summary judgment is appropriate when the pleadings and other evidence on file, viewed in a light most favorable to appellant, demonstrate that no genuine issue of material fact remains in dispute and that respondents are entitled to judgment as a matter of law.<sup>4</sup>

In granting summary judgment to respondents, the district court determined that the prior arbitration decision precluded appellant from relitigating the fee dispute in the district court. On appeal, appellant asserts that the arbitration decision is inapposite because it resolved the parties' fee dispute, whereas his district court action, based on claims of breach of contract and attorney malpractice, concerned separate factual issues.

“The general rule of issue preclusion[, or collateral estoppel,] is that if an issue of fact or law was actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action between the parties.”<sup>5</sup> Issue preclusion prevents a party from relitigating any issue that was “actually and necessarily litigated” in a

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<sup>3</sup>See Wood v. Safeway, Inc., 121 Nev. \_\_, \_\_, 121 P.3d 1026, 1029 (2005).

<sup>4</sup>Id.

<sup>5</sup>Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 835, 963 P.2d 465, 473 (1998) (quoting University of Nevada v. Tarkanian, 110 Nev. 581, 599, 879 P.2d 1180, 1191 (1994)).

previous suit.<sup>6</sup> Further, claim preclusion, or res judicata, precludes a subsequent action on the same claim or any part of it.<sup>7</sup> “[C]laim preclusion embraces all grounds of recovery that were asserted in a suit, as well as those that could have been asserted, and thus has a broader reach than collateral estoppel.”<sup>8</sup>

In the instant case, both collateral estoppel and claim preclusion doctrines apply to bar appellant’s claims. First, the factual allegations in the arbitration proceeding and in appellant’s complaint, including those underlying appellant’s breach of contract and malpractice claims, are fundamentally identical. Second, the arbitrator determined that the value of respondents’ proper legal services exceeded the retainer appellant had paid and that, as a result, appellant was not entitled to be reimbursed. Because binding arbitration, entered into voluntarily, constitutes an adjudication for collateral estoppel and claim preclusion purposes,<sup>9</sup> the issue whether appellant was entitled to be reimbursed the retainer fee, and thus

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<sup>6</sup>Id.

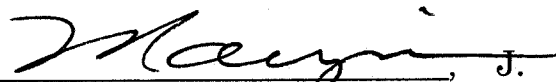
<sup>7</sup>Id.

<sup>8</sup>Tarkanian, 110 Nev. at 600, 879 P.2d at 1192.

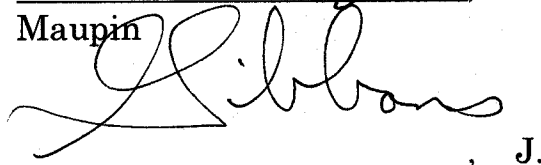
<sup>9</sup>Reno v. Reno Police Protective Ass’n, 118 Nev. 889, 894, 59 P.3d 1212, 1216 (2002) (“Collateral estoppel applies to arbitration”); see Restatement (Second) of Judgments § 84(1) (1982) (“[A] valid and final award by arbitration has the same effects under the rules of res judicata, subject to the same exceptions and qualifications, as a judgment of a court”)

the facts underlying his claims for damages and declaratory relief, had already been finally decided when appellant filed his complaint.<sup>10</sup> Accordingly, we conclude that the district court did not err when it granted respondents summary judgment, and we thus

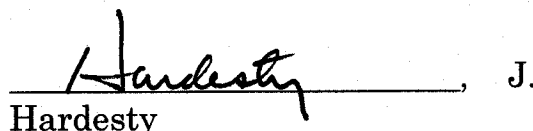
ORDER the judgment AFFIRMED.<sup>11</sup>

 J.

Maupin

 J.

Gibbons

 J.

Hardesty

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<sup>10</sup>Although respondent Novak was not a party to the arbitration, the doctrine of non-mutual defensive collateral estoppel, for the same reason, bars appellant's claims against her. See Scott v. Snelling and Snelling, Inc., 732 F. Supp. 1034, 1038 (N.D. Cal. 1990) (recognizing that, under the doctrine of non-mutual defensive collateral estoppel, "a litigant not a party to a prior case [may] seek [ ] to preclude relitigation of an issue by its current opponent who was a party to the prior case and lost on the very issue which the opponent seeks to relitigate in the current action").

<sup>11</sup>In light of this order, and as no transcripts were necessary to our resolution of this appeal, we deny appellant's transcript request.

cc: Hon. Dan L. Papez, District Judge  
Miguel Angel Ramirez  
Christopher R. Oram  
White Pine County Clerk