IN THE SUPREME COURT OF THE STATE OF NEVADA

HECTOR J. ZALDANA, Appellant, vs. DANIEL AHLSTROM, IN HIS CAPACITY AS CLARK COUNTY PUBLIC ADMINISTRATOR; AND COUNTY OF CLARK, A POLITICAL SUBDIVISION OF THE STATE OF NEVADA, Respondents.	No. 48091
HECTOR J. ZALDANA, Appellant, vs. CAROL MCLEOD, AN INDIVIDUAL; AND MCLEOD REAL ESTATE CORPORATION, D/B/A HORIZON PROPERTIES, A NEVADA CORPORATION, Respondents.	No. 48093

FILED

APR 09 2007

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

ORDER OF AFFIRMANCE

These consolidated proper person appeals challenge a district court order dismissing appellant's amended complaint. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Appellant Hector J. Zaldana filed an amended complaint in the district court, asserting that respondent Daniel Ahlstrom, in administering the estate of appellant's deceased wife, misrepresented the status of several estate properties and then, along with respondent Carol McLeod, negligently or fraudulently sold the properties below market value. Zaldana also asserted a defamation claim against McLeod, contending that McLeod made false written representations against Zaldana, damaging his reputation. Finally, Zaldana asserted a claim for

"respondeat superior" against respondent Clark County in its capacity as Ahlstrom's employer.

McCleod filed a motion to dismiss and for attorney fees and costs, arguing that the subject matter of Zaldana's amended complaint was subject to the jurisdiction of the probate court in the Matter of the Estate of Suilan Liu Chan, Deceased, Case No. P48073, and that all matters referenced in the amended complaint related to issues and causes of action that had been previously ruled upon in the probate court. McLeod pointed out that the sale of each of the properties in question took place in the probate matter nearly two years earlier, after due notice to all interested parties, including Zaldana, and without any objections or later appeals under NRS 155.190(6) challenging the sales. Thus, McLeod argued, res judicata principles foreclosed Zaldana from litigating claims that he could have, but failed to, pursue through the probate case. Ahlstrom and Clark County joined in the motion.

Zaldana opposed the motion, arguing that his complaint was grounded in tortious acts that were not discovered or confirmed until after the probate action concluded, and that not all parties named in his amended complaint were "entities privy" to the probate proceedings. Following a hearing, the district court dismissed Zaldana's complaint as to Ahlstrom' and Clark County. Later, the court granted McLeod's motion to dismiss and for attorney fees and costs. Zaldana appeals.

In his proper person civil appeal statement, Zaldana asserts that, by referring to him as his deceased wife's "ex-husband" in a letter, McCleod defamed him, causing him damage in the form of "significant attorney fees and legal costs." Zaldana contends that McLeod is not entitled to "immunity" from liability because her defamatory statement

was not published in the context of the probate proceeding. He does not appear to challenge any other aspect of the district court's dismissal order.

We conclude that the district court properly dismissed Zaldana's defamation claim against McLeod, since the statement that Zaldana at issue was published in the context of, and pertinent to, the probate proceedings.[1] Further, we note that the property that was the subject matter of Zaldana's amended civil complaint was sold in the probate matter in accordance with NRS 148.220-.270, and Zaldana did not object, during the probate proceedings, to the sales or to the distribution of any probate assets. Moreover, Zaldana did not appeal from the order authorizing and confirming the sales or from the property distribution.[2] Since Zaldana had the opportunity to challenge the propriety of the confirmation and sale of the subject property in the probate court and failed to do so, and since he likewise failed to file a timely appeal under NRS 155.190, the district court properly dismissed Zaldana's civil action

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[1]See Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 60, 657 P.2d 101, 104 (1983) (providing that communications published in the course of judicial proceedings are absolutely privileged—thus barring any civil litigation grounded on the underlying communication—so long as they are in some way pertinent to the action); Fink v. Oshins, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002) (applying the absolute privilege rule to "communications preliminary to a proposed judicial proceeding") (internal quotations omitted).

[2]See NRS 155.190 (providing that an appeal may be taken within thirty days of the notice of entry of an order authorizing or confirming the sale of real estate or distributing property to heirs).

as to all respondents,[3] and acted within its discretion by awarding attorney fees and costs to McLeod.[4] Accordingly, we affirm the district court's dismissal order and attorney fees award.

It is so ORDERED.[5]

Parraguirre, J.
Parraguirre

Hardesty, J.
Hardesty

Douglas, J.
Douglas

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[3]See In re Hermann, 100 Nev. 1, 28, 677 P.2d 594, 611 (1984) (concluding that an order awarding attorney fees, entered in the probate court, "was final and no longer subject to challenge by appeal or otherwise," since appellants failed to challenge that order within thirty days as set forth under NRS 155.190) (emphasis in original); Sarman v. District Court, 99 Nev. 201, 660 P.2d 990 (1983) (recognizing that, where the probate court, in accordance with NRS 148.220, advertises the sale of the estate's real property to potential bidders and provides notice to all heirs, its subsequent order confirming the sale the estate's property is not subject to collateral attack in a later independent district court action).

[4]See Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560 (1993); NRS 18.010(2)(b); NRS 18.020.

[5]We have considered Zaldana's December 27, 2006 notice, in which he informed this court all of his court filings included a "time-date stamp."

cc: Hon. Michelle Leavitt, District Judge
Hector J. Zaldana
Clark County District Attorney David J. Roger/Civil Division
Trent, Tyrell & Associates
Eighth District Court Clerk