

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERTO "ROBERT" URANGA,  
Appellant,  
vs.  
MONTROY SUPPLY COMPANY OF  
NEVADA; EDWARD WOJNA; AND  
UNITED STATES EQUAL  
EMPLOYMENT OPPORTUNITY  
COMMISSION (EEOC),  
Respondents.

No. 50664

**FILED**

JAN 09 2009  
FRAGIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing appellant's complaint and awarding attorney fees and costs to respondents. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

FACTS

Before the underlying district court case was instituted, respondent Edward Wojna apparently filed a district court action to remove a notice of lis pendens that appellant Roberto "Robert" Uranga had recorded against Wojna's personal residence. During the course of that litigation, Uranga filed counterclaims against Wojna and a third-party complaint against respondent Montroy Supply Company of Nevada, asserting claims arising out of Uranga's former employment with Montroy Supply. The counterclaims and third-party claims were later dismissed by

the district court under DCR 13(3),<sup>1</sup> when Uranga failed to file a written opposition to a filed motion to dismiss.

Thereafter, Uranga filed a tort action in the district court against, among others, Montroy Supply, Wojna, and respondent the United States Equal Employment Opportunity Commission (EEOC). Uranga's complaint was untimely served on respondents, who then moved to dismiss the complaint. On October 2, 2007, the district court, after concluding that Uranga had failed to oppose the EEOC's motion, dismissed the claims against the EEOC. Later, on December 12, 2007, after finding that Uranga had failed to timely serve his complaint and that the claims were barred under the claim preclusion doctrine, the court dismissed the remainder of Uranga's complaint. The December 12 order also awarded \$11,085.73 in attorney fees and costs and limited Uranga's future access to the courts by declaring him to be a vexatious litigant. Uranga has appealed. As directed, the EEOC has timely filed a combined response and a motion to dismiss the appeal. Wojna and Montroy Supply have timely filed a response.

#### DISCUSSION

With respect to the EEOC's motion to dismiss the appeal, we agree with the EEOC that Uranga's civil proper person appeal statement raises arguments only regarding the district court's December 12, 2007, order and does not sufficiently indicate an intent to challenge the district

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<sup>1</sup>DCR 13(3) provides that a failure to timely file an opposition "may be construed as an admission that the motion is meritorious and a consent to granting the same."

court's October 2, 2007, order that dismissed the EEOC. Accordingly, we grant the EEOC's motion to dismiss it from the appeal.

On appeal, Uranga argues that the dismissal of his claims against Wojna and Montroy Supply was improper because (1) he was only one day late in serving his complaint and the failure to comply with the service deadline was largely attributable to delays beyond his control, and (2) claim preclusion does not apply because the dismissal of his prior counterclaims and third-party claims was due to "exploitation and manipulation of judicial process." Uranga also asserts that the vexatious litigant declaration improperly arose due to both a misguided frustration with a general backlog of cases in the district court and bias against him as a proper person litigant. Wojna and Montroy Supply, however, disagree.

#### Dismissal of the complaint

Claim preclusion is triggered by the entry of a judgment, and it precludes another suit on that same claim. Five Star Capital Corp. v. Ruby, 124 Nev. \_\_\_, 194 P.3d 709 (2008). Further, claim preclusion also bars any grounds of recovery that could have been asserted but that were not. Id. at \_\_\_, 194 P.3d at 713. The three-part test for determining if claim preclusion applies considers whether: "(1) the parties or their privies are the same, (2) the final judgment is valid, . . . and (3) the subsequent action is based on the same claims or any part of them that were or could have been brought in the first case." Id. (footnotes omitted). As the district court considered matters outside of the pleadings, such as letters sent by Uranga to Wojna, Montroy Supply, and their attorneys, we review the dismissal order as though it were an order granting summary judgment. Witherow v. State, Bd. of Parole Comm'rs, 123 Nev. \_\_\_, \_\_\_, 167 P.3d 408, 409 (2007). This court reviews orders granting summary

judgment de novo. Id.; Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

Here, the claims against Wojna and Montroy Supply enumerated in Uranga's complaint are based entirely on the same facts and circumstances as the counterclaims and third-party claims filed by Uranga against Wojna and Montroy Supply in the prior district court case. Accordingly, because (1) the two district court cases involved the same parties, (2) there was a valid final judgment on the prior counterclaims and third-party claims, and (3) the complaint in this matter was based entirely on claims that were or could have been brought in the prior action, the district court properly determined that Uranga's claims were barred by claim preclusion and dismissed Uranga's complaint. Five Star Capital Corp., 124 Nev. at \_\_\_\_, 194 P.3d at 716 (explaining that claim preclusion is necessary in order to provide finality and prevent parties from filing another suit on the same set of facts as the initial suit until they obtain the outcome desired).<sup>2</sup>

#### Vexatious litigant declaration

With respect to the vexatious litigant portion of the order, we conclude that the district court did not abuse its discretion in declaring Uranga a vexatious litigant. As required by Jordan v. State, Department of Motor Vehicles, the district court conducted the four-factor analysis for determining whether court access should be restricted. 121 Nev. 44, 60-62, 110 P.3d 30, 42-44 (2005), overruled on other grounds by Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. \_\_\_\_, 181 P.3d 670 (2008). First,

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<sup>2</sup>In light of this conclusion, we need not reach Uranga's argument regarding the service of process timing.

the district court provided Uranga with reasonable notice of and an opportunity to respond to the vexatious litigant order. Second, the court created an adequate record for review, as its order explained in detail its reasons why Uranga's court access should be restricted. Third, the court made substantive findings as to the frivolous and harassing nature of Uranga's actions, specifically observing that Uranga encumbered Wojna's personal residence with a notice of lis pendens despite not yet having filed a cause of action against Wojna, brought the complaint in this matter without any legal justification, and sent numerous harassing letters to Wojna, Montroy Supply, and their attorneys, which, in the district court's words, demonstrated a "mean, relentless and obsessive spirit."<sup>3</sup> Fourth, the court's order was narrowly tailored to address the specific problem encountered, by limiting the scope of the restrictions to claims/actions against "these Defendants, their officers, counsel, agents, or employees related to any matter which is the subject of the above-captioned litigation." Further, the order properly provided that any subsequent filings against those listed individuals would first be submitted to the district court for review pursuant to Jordan. Accordingly, as the district court did not abuse its discretion regarding the vexatious litigant portion of the December 12 order, we decline to set aside the declaration.

Award of attorney fees and costs

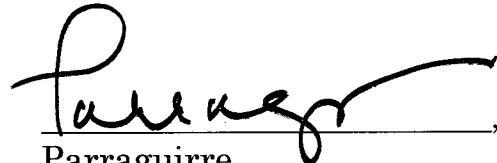
This court reviews the district court's award of attorney fees and costs as sanctions for an abuse of discretion. See Nevada Power v. Fluor Illinois, 108 Nev. 638, 646-47, 837 P.2d 1354, 1360 (1992). For the

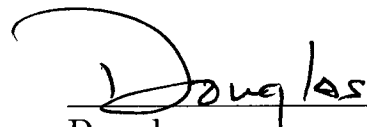
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<sup>3</sup>Having reviewed these letters, we agree with the district court's assessment.

reasons discussed above regarding the vexatious litigant declaration, we conclude that the district court did not abuse its discretion in sanctioning Uranga by awarding \$11,085.73 in attorney fees and costs. Further, we note that Uranga makes no arguments on appeal regarding the award of attorney fees. See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that because a proper person appellant failed to cogently argue his appellate concerns regarding a claim, this court did not need to address that claim). Accordingly, for the above reasons, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Pickering

cc: Hon. Brent T. Adams, District Judge  
Roberto "Robert" Uranga  
James G. Allison  
McDonald Carano Wilson LLP/Reno  
John F. Suhre  
Washoe District Court Clerk