IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL TODD BREWER,
Appellant,
vs.
THE STATE OF NEVADA, AND THE STATE OF NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

No. 52320

FILED

FEB 04 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from district court orders denying a petition for an injunction and denying a motion to vacate the judgment in an action seeking medical treatment by an inmate under the Eighth Amendment right against cruel and unusual punishment.[1] First Judicial District Court, Carson City; William A. Maddox, Judge.

Appellant initiated this case to seek an injunction from the district court to require the prison to provide certain medical treatment to him. The district court denied the petition based on claim preclusion, as appellant had already filed a lawsuit in federal court that asserted Eighth Amendment claims and the federal court had dismissed the action for failure to state a claim. Appellant filed a motion to alter or amend the judgment, which the district court denied. Then, after appellant had successfully moved to alter or amend the judgment in the federal court case, he moved to vacate the judgment by the district court, arguing that

[1]Appellant also seeks to appeal from the denial of his motion to alter or amend the judgment. That order, however, is not appealable. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 323 n.4, 130 P.3d 1280, 1284 n.4 (2006).

claim preclusion no longer applied. The district court denied the motion, finding that claim preclusion properly applied at the time the injunction request was denied and that even if claim preclusion no longer applied, the suit was still barred because appellant could not split his claims into different cases in different courts. This proper person appeal followed.

We review the denial of a request for injunctive relief for an abuse of discretion. Douglas Disposal, Inc. v. Wee Haul, LLC, 123 Nev. ___, ___, 170 P.3d 508, 512 (2007). Additionally, we review an order denying a motion to vacate a judgment for an abuse of discretion. Cook v. Cook, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

Having reviewed the record on appeal and appellant's proper person civil appeal statement, we conclude that the district court did not abuse its discretion in denying the request for injunctive relief under claim preclusion. The matter on which claim preclusion was based was a federal case, therefore federal claim preclusion law applies. Taylor v. Sturgell, 128 S. Ct. 2161, 2171 (2008). Under federal law claim preclusion, "a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90, 93 (1980). As this matter involved issues that were related to the federal case, the claim for injunctive relief could have been brought in the federal case, and there was a final judgment on the merits between these parties or their privies. Thus, claim preclusion applied and the request for an injunction was properly denied. Appellant argues that, because he had a pending motion to alter or amend the federal judgment when the district court denied his injunction, claim preclusion did not apply. This argument is incorrect, as a pending Rule 59(e) motion does not prevent the final judgment from

serving as a basis for claim preclusion. Tripati v. Henman, 857 F.2d 1366, 1367 (9th Cir. 1988).

We also conclude that the district court did not abuse its discretion in denying the motion to vacate the judgment. While the judgment could no longer be upheld based on claim preclusion once the federal court granted the motion to alter or amend its judgment and vacated its judgment, denial of the motion to vacate was still appropriate because appellant is prohibited from splitting his causes of action. Smith v. Hutchins, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977); Fitzharris v. Phillips, 74 Nev. 371, 376-77, 333 P.2d 721, 724 (1958), disapproved on other grounds by Lee v. GNLV Corp., 116 Nev. 424, 996 P.2d 416 (2000). As this court has previously held, "[i]t would be contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause." Fitzharris, 74 Nev. at 376, 333 P.2d at 724. Indeed, "a single cause of action may not be split and separate actions maintained." Smith, 93 Nev. at 432, 566 P.2d at 1137. Therefore, the district court did not abuse its discretion in denying the motion to vacate the judgment. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, J.
Cherry

_____, J.
Saitta

_____, J.
Gibbons

cc: Hon. William A. Maddox, District Judge
Randall Todd Brewer
Attorney General Catherine Cortez Masto/Carson City
Carson City Clerk