

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL JOSEPH VOLPICELLI,
Appellant,
vs.
LORI INMAN; AND MARK INMAN,¹
Respondents.

No. 57600

FILED

JUN 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingersoll*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing a complaint alleging fraud. Second Judicial District Court, Washoe County; Brent T. Adams, Judge.

Appellant filed a complaint alleging that respondents committed fraud against the court, and other fraud causes of action, by filing a fraudulently obtained affidavit in support of a successful motion for summary judgment in a previous conversion action that appellant brought against respondents. In terms of relief, appellant's complaint requested that the court set aside the summary judgment in the closed conversion action. Respondents moved to dismiss the complaint on statute of limitations grounds, and the district court, construing the complaint as a request for relief from the summary judgment under NRCP 60(b), granted the motion to dismiss based on NRCP 60(b)'s six-month time limit. Appellant subsequently filed a motion for reconsideration, which was denied.

On appeal, appellant challenges the district court order on the motion to dismiss, as well as the order denying his motion for

¹We direct the clerk of this court to amend the caption on this court's docket to conform with the caption on this order.

reconsideration.² Appellant argues that his complaint was not based on NRCP 60(b)(1), (2), or (3), which are subject to the six-month time limit, but was based on NRCP 60(b)'s "savings clause," which states that "[t]his rule does not limit the power of a court to . . . set aside a judgment for fraud upon the court."

We have reviewed the record and considered appellant's civil proper person appeal statement, and we conclude that dismissal was appropriate. Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008) (stating that this court reviews all NRCP 12(b)(5) motions to dismiss de novo, accepts all factual allegations in the complaint as true, and draws all inferences in the plaintiff's favor). This court has held that "fraud upon the court" as used in NRCP 60(b) cannot be defined to mean "any conduct of a party or lawyer of which the court disapproves," because, among other things, such a definition would render the time limitation for motions under NRCP 60(b)(3) meaningless. NC-DSH, Inc. v. Garner, 125 Nev. ___, ___, 218 P.3d 853, 858 (2009). This court has adopted a standard for "fraud on the court" that

"embrace[s] only that species of fraud which does, or attempts to, subvert the integrity of the court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases . . . and relief should be denied in the absence of such conduct."

Id. (quoting Demjanjuk v. Petrovsky, 10 F.3d 338, 352 (6th Cir. 1993)).

²Although an order denying reconsideration is not an appealable order, we have considered appellant's arguments in his motion for reconsideration as that motion is properly part of the record on appeal. Arnold v. Kip, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007).

Appellant's complaint contains no allegations of conduct that rises to the level of "fraud upon the court" as defined by this court. Accordingly, the district court correctly determined that appellant's complaint in fact sought relief under NRCP 60(b)(3), which allows a court to relieve a party from an order or judgment based upon "fraud . . . misrepresentation or other misconduct of an adverse party." The time frame for filing a motion for relief from a judgment under NRCP 60(b) is six months. Appellant waited more than four years before requesting NRCP 60(b) relief in a separate action and, in the meantime, the decision in the underlying conversion action had been affirmed on appeal. Accordingly, we conclude that the district court did not err in dismissing appellant's complaint, and we

ORDER the judgment of the district court AFFIRMED.

Cherry, J.
Cherry

Gibbons, J.
Gibbons

Pickering, J.
Pickering

cc: Hon. Brent T. Adams, District Judge
Ferrill Joseph Volpicelli
Lori Inman
Mark Inman
Washoe District Court Clerk