

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN R. WAITE, M.D., AN
INDIVIDUAL,
Appellant,
vs.
HMC MEDICAL CENTER, LLC D/B/A
HARMON MEDICAL CENTER, A
NEVADA LIMITED LIABILITY
COMPANY; AND TIBI ELLIS, AN
INDIVIDUAL,
Respondents.

No. 58440

FILED

MAR 08 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Tracie K. Lindeman*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order denying a motion for a new trial judgment in a contract action. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

In the underlying case, appellant, through counsel, filed a complaint alleging breach of contract-related claims against respondents HMC Medical Center, LLC, and Tibi Ellis. HMC moved to dismiss the complaint, and Ellis joined in the motion. After a hearing, at which appellant did not appear, the district court, finding that appellant had been properly served with the motion and joinder but nevertheless failed to file an opposition, granted the motion and joinder, and dismissed appellant's complaint on August 21, 2007. That dismissal order was confirmed in a November 2007 district court order. An order denying appellant's motions for relief from the August and November 2007 orders was affirmed on appeal, but the matter was reversed and remanded in part so that the district court could consider appellant's request for costs on appeal. Waite v. HMC Medical Center, LLC, Docket No. 53685 (Order Affirming in Part, Reversing in Part and Remanding, September 28,

2010), (Order Denying Rehearing, November 15, 2010), and (Order Denying En Banc Reconsideration, February 23, 2011).

Although the only issue on remand was appellant's request for costs, appellant re-noticed his December 7, 2007, NRCP 59 motion for a new trial. After a hearing, the district court denied the motion, pointing out that this court had already affirmed the district court's decisions denying relief from the August and November 2007 dismissal orders. Appellant now appeals from the order denying his NRCP 59 motion.

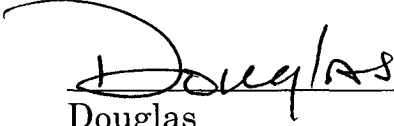
This court reviews an order denying an NRCP 59 motion for an abuse of discretion. Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1036, 923 P.2d 569, 576 (1996).


The issues presented in this appeal are the same as those presented in appellant's previous appeals. As noted above, this court affirmed all aspects of the district court's decision denying appellant's requests for relief from the August and November 2007, orders. Because the issue of whether the district court improperly dismissed appellant's complaint with prejudice, such that relief from the dismissal, which includes a new trial, was warranted, has been actually litigated and finally determined against appellant, the district court properly denied appellant's re-noticed NRCP 59 motion. Dictor v. Creative Management Services, 126 Nev. ___, ___, 223 P.3d 332, 334 (2010) (explaining that the law-of-the-case doctrine applies when an appellate court actually addresses and decides an issue explicitly or by necessary implication, and under that doctrine, "when an appellate court decides a principle or rule of law, that decision governs the same issues in subsequent proceedings in that case") (internal citation omitted); see Moore v. Jas. H. Matthews & Co., 682 F.2d 830, 833 (9th Cir. 1982) (providing that "[t]he 'law of the

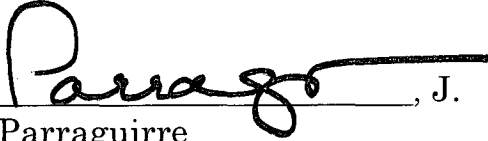
case' rule ordinarily precludes a court from re-examining an issue previously decided by the same court, or a higher appellate court").

Accordingly, we

ORDER the judgment of the district court AFFIRMED.¹


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Glenn R. Waite, M.D.
Hutchison & Steffen, LLC
Patti, Sgro & Lewis
Eighth District Court Clerk

¹Appellant's motion for leave to file briefs in proper person and his motion for leave to supplement that motion are denied, and we therefore direct the clerk of this court to detach from the July 14, 2011, supplement and return to appellant, the proposed opening brief.

Appellant's assertions that the district court failed to follow the law of the case established in the first appeal, and that it erred by determining that it lacked jurisdiction to entertain appellant's NRCP 59 motion on remand, are meritless. The district court was directed to decide appellant's NRCP 60(b) motions on remand in the first appeal, which it did, and appellant then appealed those determinations, which were affirmed. On remand on the costs issue, the district court appropriately denied, on its merits, appellant's NRCP 59 motion.