IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM A. MANKE AND LAVON MANKE, HUSBAND AND WIFE,

Appellants,

vs.

AIRPORT AUTHORITY OF WASHOE COUNTY, A QUASI-MUNICIPAL CORPORATION,

Respondent.

No. 36369

FILED

NOV 07 2001

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

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellants' request for a preliminary injunction to prevent respondent from leasing or developing five parcels of land it had acquired by condemnation from appellant sixteen years earlier.

The Mankes contend on appeal that the district court erroneously denied them injunctive relief in their independent action for relief from a sixteen-year-old judgment under NRCP 60(b). Particularly, the Mankes point to the district court's conclusion that they failed to demonstrate they were entitled to relief from the prior condemnation judgment because they failed to satisfy any of the provisions of NRCP 60(b). Although we agree with the Mankes that the district court considered grounds for relief not commensurate with an independent action under the Rule, we conclude that the district court's denial of the preliminary injunction reached the correct result, albeit for the wrong reason. Therefore, we affirm the decision of that court.[1]

Under NRCP 60(b), the court may: "relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud"; (3) void judgments; and (4) satisfied judgments. Motions in this regard must be made within six months from the date of judgment. Here, the original condemnation proceeding was concluded in

[1]This court may affirm determinations of the district court, despite flawed logic, so long as the result is correct. See SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993).

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1984. The Mankes' independent action was not filed until 1999, and consequently, NRCP 60(b) precluded the Mankes from filing a motion for relief due to the six-month time bar.

This does not mean, however, that the time limitation bars all subsequent actions. To the contrary, NRCP 60(b) also contains an independent action "savings clause" that applies when the right to file a motion under 60(b) is lost by the expiration of the time limits fixed in the rule. Under Rule 60(b), the court may choose "to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court."

"An independent action is considered to be a new civil action, not a motion under Rule 60(b)."[2] Thus, although an independent action is permitted under Rule 60(b), because it is not a motion under the Rule, its determining factors are different, and it is not subject to the Rule's time limitations.[3]

Since an independent action is designed to set aside a judgment well after any time limitations have expired, the United States Supreme Court has noted that these actions must "be reserved for those cases of 'injustices which . . . are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata."[4] Moreover, grounds for an independent action are available only to "prevent a grave miscarriage of justice," and must involve more reprehensible circumstances than those listed under NRCP 60(b)(1) and (2).[5] Such circumstances would include "the most egregious misconduct,

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[2]Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364, 741 P.2d, 802, 805 (1987) (citation omitted).

[3]If an independent action were decided with the same criteria of NRCP 60(b)(1) and (2), it would nullify the time limitation espoused under the Rule since motions that were time-barred pursuant to the Rule could be brought later as independent actions. See 12 Joseph T. McLaughlin, Moore's Federal Practice §§ 60.81[1][a] & 60.81[1][b][i] (3d ed. 2001). The six-month time limitation to set aside a judgment "would be set at naught." United States v. Beggerly, 524 U.S. 38, 46 (1998).

[4]Beggerly, 524 U.S. at 46 (quoting Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 244 (1944)).

[5]Id. at 47.

such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated."[6]

Here, the record revealed no such circumstances. Although the Mankes suggest the Airport Authority inappropriately used its eminent domain power to take land it only intended to develop later as a business park, we conclude that these bald assertions fail to substantiate a showing of "egregious misconduct," or proof of a "grave miscarriage of justice." To the contrary, it is our determination that if there was a fraudulent intent on behalf of the Airport Authority, that intent would have surfaced long before now – seventeen years after the original eminent domain proceeding.

~~Additionally, the district court was correct in denying the preliminary injunction on the merits. The government is not prohibited from changing its intended use of the land it took through its eminent domain power.[7] Therefore, even if the Airport Authority changed its intended use of the land over time, this has no effect on the validity of the Airport Authority's exercise of eminent domain.[8]~~

Having concluded that the Mankes could not satisfy the strict criteria to set aside an independent action pursuant to NRCP 60(b), we

ORDER the judgment of the district court AFFIRMED.

_____, ~~C.~~J.
Maupin

_____, J.
Young

_____, J.
Shearing

_____, J.
Agosti

_____, J.
Rose

_____, J.
Leavitt

_____, J.
Becker

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[6]Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978)

~~[7]See Heirs of Guerra v. United States, 207 F.3d 763, 768 (5th Cir. 2000).~~

~~[8]Id.~~

cc: Hon. James W. Hardesty, District Judge
Steven F. Bus,
Michael G. Chapman,
Washoe County Clerk