IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CARLOS A. HUERTA, AN INDIVIDUAL; AND GO GLOBAL, INC., A NEVADA CORPORATION,
Appellants,
vs.
SIG ROGICH, A/K/A SIGMUND ROGICH, AS TRUSTEE OF THE ROGICH FAMILY IRREVOCABLE TRUST; AND ELDORADO HILLS, LLC, A NEVADA LIMITED LIABILITY COMPANY,
Respondents.

No. 70492

FILED

JUN 29 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a denial of NRCP 60(b) relief. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

In 2010, appellants declared bankruptcy and listed a potential receivable from respondents on their Schedule B form but not on their Disclosure Statement. A few years later, appellants sued respondents for various civil claims. Respondents moved for summary judgment, arguing that appellants were judicially estopped from bringing these claims because they did not properly list the claims in their bankruptcy. The district court agreed and granted respondent's motion for summary judgment against appellants.[1]

Appellants failed to timely appeal the order granting the summary judgment, and instead moved for relief under NRCP 60(b)

[1]We do not recount the facts except as necessary to our disposition.

roughly 15 months later. The district court denied the motion. Respondents argue that orders denying Rule 60(b) motions are not independently appealable, but the Nevada Supreme Court has ruled that they are—both in published caselaw and in a prior order in this very appeal. *Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1378-79 (1987); *Huerta v. Sig Rogich*, Docket No. 70492 (Order Denying Motion and Reinstating Briefing, Oct. 6, 2016). Thus, we have jurisdiction to consider appellants' Rule 60(b) arguments. On appeal, appellants argue the district court erred in denying Rule 60(b) relief because it lacked jurisdiction and failed to give preclusive effect to a bankruptcy court order under the principles of res judicata and full faith and credit. Appellants also argue Rule 60(b) relief was necessary because it was no longer equitable to enforce the underlying grant of summary judgment and setting it aside was necessary to prevent manifest injustice. We disagree.

Appellants argue that the order granting summary judgment is void and they should be relieved from the judgment under NRCP 60(b)(4). "For a judgment to be void, there must be a defect in the court's authority to enter judgment through either lack of personal jurisdiction or jurisdiction over subject matter in the suit." *Gassett v. Snappy Car Rental*, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), *superseded by rule on other grounds*, NRCP 12(b), *as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 654-56, 6 P.3d 982, 984-85 (2000); *see Landreth v. Malik*, 127 Nev. 175, 179, 251 P.3d 163, 166 (2011) ("[I]f the district court lacks subject matter jurisdiction, the judgment is rendered void."). An order is not void simply because it is erroneous. *See United Student Aid Funds, Inc. v. Espinosa*, 599 U.S. 260, 273-75 (2010) (holding that, although a bankruptcy court committed legal error by not

undertaking a required analysis, such error did not render the order void); *see also*11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Proceedure* § 2862 (3d ed. 2012). We review for subject matter jurisdiction de novo. *Ogawa v. Ogawa*, 125 Nev. 660, 667, 221 P.3d 699, 704 (2009).

As a threshold matter, state courts have plenary jurisdiction and may exercise concurrent jurisdiction with federal courts over federal claims. *See John v. Douglas Cty. Sch. Dist.*, 125 Nev. 746, 756, 219 P.3d 1276, 1283 (2009) ("As courts of general jurisdiction, Nevada district courts have the authority to decide federal claims." (citing *Howlett v. Rose*, 496 U.S. 356, 367 (1990))), *superseded by statute on other grounds,* NRS 41.660(3)(b); *see also Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 507 (1962) ("We start with the premise that nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law.").[2]

Moreover, "the primary purpose of judicial estoppel is to protect the judiciary's integrity, and a court may invoke the doctrine at its discretion." *NOLM, LLC v. Cty. of Clark*, 120 Nev. 736, 743, 100 P.3d 658, 663 (2004) (citation omitted). Because state district courts are courts of plenary jurisdiction, have authority to apply judicial estoppel, and can consider federal sources of law, the district court had the subject matter

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[2]We further note that federal courts have exclusive jurisdiction only over the bankruptcy petition itself; all other proceedings "may" be heard by a state or federal court. 11 USC § 1334(b); *In re Canion*, 196 F.3d 579, 584 (5th Cir. 1999); *see also* 13D Charles Alan Wright et. al, *Federal Practice and Proceedure* § 3570 (3d ed. 2008) ("[I]n civil proceedings arising in or related to bankruptcy cases, there is concurrent jurisdiction—such matters may be heard by either federal or state courts.").

jurisdiction to consider whether the disclosure statement judicially estopped appellants from asserting certain civil claims in state court.

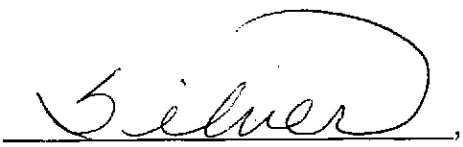
Appellants also argue the judgment is void because the district court failed to give full faith and credit to the bankruptcy court and failed to apply the doctrine of res judicata. However, the district court appropriately gave the bankruptcy court's orders full faith and credit by recognizing the disclosure statement's validity for bankruptcy proceedings, and simply concluded that the contents of the disclosure statement warranted invocation of the doctrine of judicial estoppel for the purposes of this state court proceeding—a conclusion under state law that is not inconsistent with the federal bankruptcy orders. And although appellants fail to cogently argue the elements for res judicata on appeal, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006), we note that ruling in appellants' favor would effectively eliminate the possibility of judicial estoppel in all such cases. Such a holding would directly contravene the fundamental principles of judicial estoppel and the caselaw we find persuasive, and we decline to reverse on this basis. *See NOLM,* 120 Nev. at 743, 100 P.3d at 663 ("The primary purpose of judicial estoppel is to protect the judiciary's integrity . . . ."); *Hamilton v. State Farm Fire & Cas. Co.*, 270 F.3d 778, 785 (9th Cir. 2001) ("Hamilton's failure to list his claims against State Farm as assets on his bankruptcy schedules deceived the bankruptcy court and Hamilton's creditors, who relied on the schedules to determine what action, if any, they would take in the matter."); *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557 (9th Cir. 1992) ("Failure to give the required notice [in a disclosure statement] estops Desert Mountain and justifies the grant of summary judgment to the defendants.").

Appellants also seek relief based on NRCP 60(b)(5), which allows a court to set aside a judgment that has been satisfied or an injunction that is no longer equitable. But appellants do not explain how the judgment against them has been satisfied, released, discharged, or argue that a prior judgment upon which it is based has been reversed or otherwise vacated. *See Edwards*, 122 Nev. at 330 n.38, 130 P.3d at 1288 n.38. Moreover, appellants' arguments that the grant of summary judgment "functions like an injunction" simply because they may not sue on those claims again is unsupported by legal authority and thus ignored. *See id.* And, although appellants argue all the errors complained of constituted "manifest injustice" sufficient to set the judgment aside, "manifest injustice" is not an independent ground for NRCP 60(b) relief. *See id.* Lastly, appellants list an argument relating to NRCP 54(b) as an issue on appeal, but fail to discuss it. *See id.* Thus, these arguments are ignored on appeal.

In the end, appellants' arguments smack of an attempt to reframe the issue of whether the district court's application of judicial estoppel was proper into a jurisdictional question. Had appellants timely appealed the grant of summary judgment, this court would be in a position to review the wisdom of the district court's application of judicial estoppel. But given that appellants moved for NRCP 60(b) relief more than six months after the notice of entry of judgment was entered, appellants were—and remain—constrained to arguments that the judgment is void, satisfied, or was obtained as a result of fraud upon the court. *See generally* NRCP 60(b); *see also Holiday Inn*, 103 Nev. at 63, 732 P.2d at 1379 (holding that, when NRCP 60(b) relief presents the only basis of appeal, this court is limited to review of NRCP 60(b) relief only and cannot

review the underlying judgment). We cannot conclude that the district court lacked subject matter jurisdiction to engage in the analysis it did, and for the foregoing reasons, we

ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Silver

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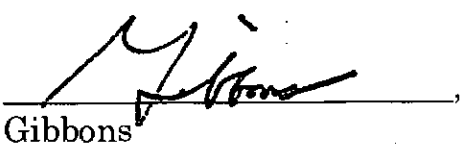

_____, J.
Gibbons

cc: Hon. Nancy L. Allf, District Judge
Lansford W. Levitt, Settlement Judge
Schwartz Flansburg PLLC
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Fennemore Craig, P.C./Las Vegas
Eighth District Court Clerk