

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JONAH PAUL ANDERS,
Appellant,
vs.
MAYLA CASACOP ANDERS,
Respondent.

No. 71266

FILED

DEC 14 2017

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

ORDER OF AFFIRMANCE

Jonah Paul Anders appeals from a district court order dismissing an annulment action. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Jonah filed the underlying complaint for annulment against respondent Mayla Casacop Anders, alleging that she was married to someone else at the time the parties were married. When Mayla failed to answer Jonah's complaint, the district court clerk entered a default against her. But without elaborating, the district court later ordered Jonah to show cause why his action should not be dismissed for lack of jurisdiction.

Following a show cause hearing, the district court found that a concurrent annulment action between the parties, which was filed before the underlying action, was proceeding in Tennessee. Because the district court determined that the Tennessee action and the Nevada action involved the same issue—annulment—the district court declined to exercise jurisdiction over Jonah's annulment claim and dismissed his complaint based on principles of comity. In particular, the district court relied on the first-to-file rule, which authorizes district courts to “decline jurisdiction over an action [if] a complaint involving the same parties and issues ha[d]

already been filed in another [trial court].” See *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982).

Jonah then moved for reconsideration, asserting, among other things, that a transcript he submitted with his motion demonstrated that the Tennessee court had rejected his annulment claim on jurisdictional grounds and, instead, granted the parties a divorce. And because Jonah’s annulment claim purportedly was not resolved on the merits in the Tennessee action, he argued that the underlying proceeding involved a different issue than the Tennessee action and that the first-to-file rule was therefore inapplicable. The district court disagreed, however, finding that the transcript established that the Tennessee court resolved Jonah’s annulment claim on the merits. This appeal followed.

On appeal, Jonah challenges the district court’s application of the first-to-file rule, arguing that, because the Tennessee court granted the parties a divorce rather than addressing his annulment claim on the merits, the underlying proceeding presented a different issue from the Tennessee proceeding—in particular, whether the parties’ marriage was void from the outset.¹ See 55 C.J.S. *Marriage* § 70 (2009) (explaining that annulment and divorce differ fundamentally in that an “annulment renders a marriage void ab initio” while a divorce terminates the marriage upon entry of the divorce decree). For support, Jonah relies on the transcript referenced above.

But contrary to Jonah’s position on appeal, a review of that transcript reveals that the Tennessee court resolved Jonah’s annulment

¹Although Jonah first raised this argument in his motion for reconsideration, we can consider it in the context of his appeal from the final judgment, as the district court considered his motion on the merits and the motion and the order denying it are a proper part of the record on appeal. See *Arnold v. Kip*, 123 Nev. 410, 416-17, 168 P.3d 1050, 1054 (2007).

claim on the merits. And regardless, Jonah's argument fails because the transcript alone is insufficient to establish that, at the time the district court dismissed his Nevada annulment claim, the Tennessee court had already entered a final judgment in the Tennessee action. *See Hamilton v. Abercrombie Radiological Consultants, Inc.*, 487 S.W.3d 114, 121 (Tenn. Ct. App. 2014) (explaining that a Tennessee trial court's oral ruling has no force and can be modified "until it has been reduced to writing and entered on the minutes of the court" (internal quotation marks omitted)); *see also Cadle Co. v. Whataburger of Alice, Inc.*, 174 F.3d 599, 603 (5th Cir. 1999) (providing that the first-to-file rule applies where related cases are *pending* in two different courts); *Pacesetter*, 678 F.2d at 94-95; *Santich v. GNC Holdings, Inc.*, 2017 WL 5614902, at *2 (S.D. Cal., Nov. 21, 2017) (recognizing that the first-to-file rule does not apply where the first-filed action is dismissed without a decision on the merits, but holding that the rule barred the plaintiffs' second-filed action because their first-filed action was pending on appeal after having been dismissed on the merits).

Moreover, during the show cause hearing and in his motion for reconsideration, Jonah represented to the district court, and thereby conceded, that before filing the underlying action, he filed an annulment claim against Mayla in Tennessee, and that this claim was still pending at the time the Nevada district court was considering whether dismissal was appropriate. And although Jonah also asserts that substantial evidence did not support the district court's determination that the Tennessee and Nevada actions involved the same issue notwithstanding the transcript from the Tennessee proceeding, evidentiary support was unnecessary to establish that proposition in light of Jonah's concession regarding the pending Tennessee annulment claim. Accordingly, we conclude that the

district court did not abuse its discretion when it invoked the first-to-file rule and dismissed Jonah's annulment claim. See *Miannecki v. Second Judicial Dist. Court*, 99 Nev. 93, 98, 658 P.2d 422, 425 (1983) (explaining that the district court has discretion to invoke principles of comity); see also *Pacesetter*, 678 F.2d at 95 (explaining that appellate courts review trial-court decisions declining to exercise jurisdiction under the first-to-file rule for an abuse of discretion).

Nevertheless, Jonah argues that the dismissal violated his right to due process. In particular, Jonah asserts that he did not receive meaningful notice and an opportunity to be heard with regard to the applicability of the first-to-file rule because the show cause order only identified jurisdiction, as opposed to the first-to-file rule, as the potential basis for dismissing his claim. See *Callie v. Bowling*, 123 Nev. 181, 183, 160 P.3d 878, 879 (2007) (recognizing that procedural due process requires meaningful notice and an opportunity to be heard). But the record reflects that, after the district court dismissed his claim, Jonah had the opportunity to fully present his arguments with regard to the first-to-file rule's applicability, as he filed a motion for reconsideration challenging the dismissal, which the district court evaluated on the merits. See *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1120 (9th Cir. 2000) (considering a due process challenge to the district court's sua sponte imposition of sanctions, but concluding that there was no due process violation primarily because the appellants moved for reconsideration and the court considered that motion on the merits, but also because the court had previously witnessed the sanctionable conduct).

And although Jonah further asserts that the district court, in dismissing his annulment claim, relied on an improper ex parte

communication from Mayla's counsel in the Tennessee action, and thereby violated his due process rights, he was not prejudiced by that communication. See NRCP 61 (requiring the court, at every stage of a proceeding, to disregard errors that do not affect a party's substantial rights); see also *Alexander Shokai, Inc. v. Comm'r*, 34 F.3d 1480, 1484 (9th Cir. 1994) (explaining that an ex parte communication violates a party's due process rights if it causes unfair prejudice). Indeed, the record reflects that, despite the communication, the district court permitted Jonah to present argument with regard to the applicability of the first-to-file rule and ultimately based its decision on his various representations regarding the Tennessee action, including that it was still pending before the Tennessee court at that time. Thus, Jonah failed to demonstrate that the dismissal violated his due process rights. Accordingly, based on the foregoing, we

ORDER the judgment of the district court AFFIRMED.²



C.J.

Silver



J.

Tao



J.

Gibbons

²We have considered Jonah's remaining arguments and conclude that they do not provide a basis for relief. And although Mayla included various documents for this court's consideration with her April 5, 2017, and April 24, 2017, proper person filings, we do not consider those documents to the extent that they were not part of the pre-appeal district court record. See *Carson Ready Mix, Inc. v. First Nat'l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) (providing that appellate courts cannot consider materials that are not a proper part of the record on appeal).

cc: Hon. Thomas L. Stockard, District Judge
McDonald Carano LLP/Reno
Mayla Casacop Anders
Churchill County Clerk