


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FRANK MILFORD PECK,
Appellant,
vs.
THE STATE OF NEVADA; WASHOE
COUNTY; WASHOE COUNTY CRIME
LAB; RENE ROMERO, DIRECTOR;
AND JEFFREY RIOLO, SR. ANALYST,
Respondents.

No. 75026

FILED

OCT 15 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Frank Milford Peck appeals from a district court order denying a motion for NRCP 60 relief in a tort matter. Second Judicial District Court, Washoe County; Scott N. Freeman, Judge.

After the district court's order granting respondents judgment on the pleadings was affirmed by this court, Peck filed an NRCP 60(b)(3) motion to set aside the judgment, alleging fraud, collusion and conspiracy. *See Peck v. Washoe Cty.*, Docket No. 67775 (Order of Affirmance, Aug. 31, 2015). The district court denied the motion, finding it was untimely since it was filed more than six months after entry of the order. Peck then filed a timely motion for reconsideration, which the district court also denied. This appeal followed.

Peck correctly argues on appeal that the six month time limit contained in NRCP 60(b) does not bar a motion to set aside judgment based upon fraud upon the court. *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 659, 218 P.3d 853, 861-62 (2009) (stating that "[o]ur Nevada cases have held that a party who seeks relief from a judgment based on fraud upon the court is

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not subject to NRCP 60(b)'s six-month limitation period"). However, our review of the record reveals that his NRCP 60(b)(3) motion failed to establish fraud upon the court and we therefore affirm the district court's order denying that motion. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) ("This court will affirm a district court's order if the district court reached the correct result, even if for the wrong reason.").


Specifically, Peck's central argument in the NRCP 60(b)(3) motion was that the district court, in collusion with the District Attorney's office, ignored his claim of fabrication of evidence and granted respondents immunity when the court knew that immunity does not extend to those who fabricate evidence. This argument essentially attacks the order granting judgment on the pleadings, which has already been affirmed by this court. *See Peck*, Docket No. 67775 (Order of Affirmance, Aug. 31, 2015). Further, Peck's conclusory allegations of collusion, without evidence, and based upon the court's previously affirmed ruling do not suffice to establish fraud by clear and convincing evidence. *See NC-DSH*, 125 Nev. at 657, 218 P.3d at 860-61 (providing that in order to have a final judgment vacated for fraud upon the court, fraud must be established by clear and convincing evidence). Accordingly, we affirm the district court's order denying NRCP 60(b)(3) relief.

Further, given our affirmance of the district court's denial of Peck's NRCP 60(b)(3) motion, we conclude the district court did not abuse its discretion in denying Peck's motion for reconsideration of that denial, which we construe as an NRCP 59(e) motion to alter or amend. *See AA Primo Builders, LLC v. Washington*, 126 Nev. 578, 584-85, 589, 245 P.3d 1190, 1194-95, 1197 (2010) (concluding that regardless of label, a timely

filed motion for reconsideration can be construed as an NRCP 59(e) motion and providing that an order denying an NRCP 59(e) motion is reviewed for an abuse of discretion on appeal from the challenged order or judgment). Thus, we affirm the district court orders at issue in this matter.

It is so ORDERED.


_____, C.J.
Silver


_____, J.
Tao


_____, J.
Gibbons

cc: Hon. Scott N. Freeman, District Judge
Frank Milford Peck
Washoe County District Attorney/Civil Division
Washoe District Court Clerk