IN THE COURT OF APPEALS OF THE STATE OF NEVADA

LN MANAGEMENT LLC SERIES 440 SARMENT, Appellant, vs. WELLS FARGO BANK, N.A., Respondent.	No. 72979
LN MANAGEMENT LLC SERIES 440 SARMENT, Appellant, vs. WELLS FARGO BANK, N.A., Respondent.	No. 73451

ORDER OF AFFIRMANCE

In these consolidated appeals, LN Management LLC Series 440 Sarment appeals from district court orders denying its motion to set aside dismissal in a quiet title action and dismissing its complaint in a subsequent related action. Second Judicial District Court, Washoe County; Lynne K. Simons, Judge.

LN purchased property at an HOA foreclosure sale in 2013. LN then filed a quiet title action against respondent Wells Fargo Bank, N.A., and others. Wells Fargo moved to dismiss LN's suit, arguing that the HOA foreclosure did not eliminate Wells Fargo's deed of trust. The district court granted Wells Fargo's motion to dismiss. No other action occurred until three years later, when LN moved to set aside the dismissal pursuant to

NRCP 60.[1] The district court denied the motion, and LN filed an appeal of that decision. LN then filed an independent action to challenge the final order in the quiet title action. Wells Fargo again moved to dismiss the independent action. The district court dismissed the independent action as well, and LN filed its second appeal. Both appeals are now before this court.

In deciding these appeals, we must consider the district court's decisions regarding the application of NRCP 60(b) both by motion and independent action. First, we look at the district court's broad discretion in deciding LN's NRCP 60(b) motion to set aside a judgment. *See Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996). The district court's sua sponte order determined that LN was time-barred from raising a challenge pursuant to NRCP 60(b) (1)-(3), and that its order on Wells Fargo's motion was not a final judgment to warrant consideration under NRCP 60(b) (4) or (5). While we agree that LN was time-barred from moving to set aside the order under NRCP 60(b) (1)-(3), the district court's determination regarding the applicability of NRCP 60(b) (4) and (5) to the order is incorrect and inconsistent as the order was final due to all actionable claims being dismissed as recognized in the district court's later order in the independent action.[2] That, however, does not prevent us from affirming the district court's denial of the motion to set aside.

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[1]LN simultaneously sought a preliminary injunction, but any such action would necessarily be dependent on the district court setting aside its order dismissing LN's claims.

[2]LN argues extensively that the district court's order dismissing the original quiet title action was not final. But the subject order ended all litigation involving the parties that had appeared in the action and, thus, was a final appealable judgment pursuant to NRAP 3A(b)(1). *See Rae v. All Am. Life & Cas. Co.*, 95 Nev. 920, 922-23, 605 P.2d 196, 197 (1979).

LN's argument in its motion to set aside the district court's order is based upon NRCP 60(b)(4) which allows for a court to set aside a judgment when the judgment is void. "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 as stated in Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 6 P.3d 982 (2000). But the record and appellate argument do not include any challenge by LN to the district court's jurisdiction over it or the subject matter. As such, we affirm the district court's denial of the motion to set aside the judgment in the first matter. *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.").

In the second matter, we first note that a party may seek to vacate a judgment by motion or by bringing an independent action, but not both. *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 652-53, 218 P.3d 853, 857-58 (2009) (citing 11 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2868 (2d ed. 1995) (noting that "[d]enial of relief [by motion] in th[e rendering] court will bar an independent equitable action in another court, unless the denial was on a ground that precluded reaching the merits of the motion, or the circumstances have changed")). Regardless, in reviewing the district court's order granting Wells Fargo's motion to dismiss the independent action de novo, *see Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008), we determine that the district court properly dismissed the independent action.

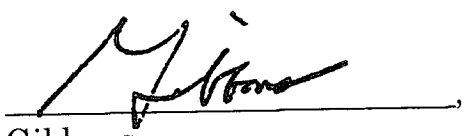
Accepting all of the alleged facts in the complaint as true, LN's independent action fails to present facts that warrant the extraordinary remedy of setting aside the district court's prior order. *See id.* at 228, 181 P.3d at 672. Specifically, "[t]o obtain relief by independent action after a judgment has become final and otherwise unreviewable, a claimant must meet the traditional requirements of such an equitable action." *Bonnell v. Lawrence*, 128 Nev. 394, 399, 282 P.3d 712, 715 (2012). The elements of such an action are lacking in LN's independent action complaint as it does not present a defense on the merits to the judgment lost to LN without attribution to LN by its own omission, neglect, or default. *See id.* at 399 n.4, 282 P.3d at 715 n.4 (setting forth the elements for an equitable action to set aside a final judgment). LN fails to allege any facts that explain the three year delay in seeking to set aside the prior judgment, a required showing for a defense on the merits to the judgment not lost by LN's own action or inaction. *See id.* at 399, 282 P.3d at 715. As such, the complaint lacks the necessary elements to set forth any "set of facts, which, if true, would entitle [the claimant] to relief." *Buzz Stew*, 124 Nev. at 228, 181 P.3d at 672.

Accordingly, we

ORDER the judgment of the district court AFFIRMED.

_____, C.J.
Silver

_____, J.
Tao



_____, J.
Gibbons

cc: Hon. Lynne K. Simons, District Judge
Kerry P. Faughnan
Snell & Wilmer, LLP/Las Vegas
Washoe District Court Clerk