

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYLENE GUILLEN,  
Appellant,  
vs.  
TONY GUILLEN,  
Respondent.

No. 37495

FILED

DEC 21 2004

ORDER OF AFFIRMANCE

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
CHIEF DEPUTY CLERK

This is an appeal from a district court order dismissing appellant's action for fraud perpetrated in divorce proceedings. Third Judicial District Court, Churchill County; Archie E. Blake, Judge.

Appellant Raylene Guillen and respondent Tony Guillen were divorced on October 6, 1998. Although both parties were residents of Churchill County, which falls within the Third Judicial District Court, they obtained the divorce in the Second Judicial District Court. At the time of this proceeding, both parties continue to reside in Churchill County.

On November 16, 2000, Raylene filed a complaint against Tony in the Third Judicial District Court, alleging four causes of action. First, Raylene contended that Tony committed extrinsic fraud against the Second Judicial District Court in the divorce action by submitting false financial information. Raylene sought to have the divorce decree set aside. Second, Raylene claimed that Tony committed fraud against her by presenting false financial information for the purpose of obtaining a valuation of community property. Raylene sought monetary damages. Third, Raylene alleged that Tony engaged in intentional fraud and misrepresentation by fraudulently representing information concerning business expenses. Raylene sought monetary damages. Fourth, Raylene

alleged that Tony made fraudulent representations, resulting in his acquisition of certain real and personal property. Raylene sought to have that property placed in a constructive trust.

In response, Tony filed a motion to dismiss the complaint under NRCP 12(b)(5). Tony claimed that the complaint failed to plead fraud with particularity, as required under NRCP 9(b), and that the district court lacked jurisdiction to hear the case.

On February 3, 2001, the Third Judicial District Court granted the motion to dismiss. The court wrote that in order to grant the relief sought by Raylene, it would have to value and assign assets previously distributed by the Second Judicial District Court, essentially reforming the divorce decree. The Third Judicial District Court found that it does not have jurisdiction to review or vacate orders from other district courts. Furthermore, the court found that Raylene failed to plead fraud with particularity.

On appeal, Raylene argues that the Third Judicial District Court erred by dismissing her complaint for lack of jurisdiction. Raylene argues that NRCP 60(b) allows a litigant to obtain relief from a judgment by motion or by an independent action. Raylene contends that her action was appropriate since it was brought in an independent action in the Third Judicial District Court, where Tony resides. Raylene alleges that the Third Judicial District Court was not asked to evaluate any matter ruled on by the Second Judicial District Court.

Tony counters that Third Judicial District Court does not have jurisdiction to set aside the divorce decree entered in the Second Judicial District Court. Tony explains that he is not contending that Raylene cannot file an independent action, but that the independent action must

be filed in the court that entered the divorce decree. Tony contends that if the Third Judicial District Court were to hear this case, it would result in an improper bifurcation.

The standard of review for a dismissal of a complaint is well established. Under the rigorous standard of review for dismissal pursuant to NRCP 12(b)(5), this court must construe the pleadings liberally and draw every inference in favor of the non-moving party.<sup>1</sup> All factual recitations in the complaint must be accepted as true.<sup>2</sup> “Dismissal is proper where the allegations are insufficient to establish the elements of a claim for relief.”<sup>3</sup>

NRCP 60(b) states that a party may be relieved from a final judgment for the reason of fraud. NRCP 60(b) continues that the “rule does not limit the power of a court 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.”

Only Raylene’s first cause of action, that for fraud upon the court, sought to have the divorce decree set aside. An action for fraud upon the court must be brought, whether as a NRCP 60(b) motion or an independent action, in the court in which the fraud allegedly occurred.<sup>4</sup>

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<sup>1</sup>See Vacation Village v. Hitachi America, 110 Nev. 481, 484, 874 P.2d 744, 746 (1994).

<sup>2</sup>Hampe v. Foote, 118 Nev. 405, 408, 47 P.3d 438, 439 (2002).

<sup>3</sup>Id.

<sup>4</sup>Weisman v. Charles E. Smith Mgmt, Inc., 829 F.2d 511, 513-14 (4th Cir. 1987) (stating that an action seeking to set aside a judgment for fraud upon the court must be brought in the court that allegedly was the victim

*continued on next page . . .*

Accordingly, the district court did not err by dismissing Raylene's first cause of action since it should have been brought in the Second Judicial District Court.

Raylene's other causes of action, all of which involve fraud upon her, do not fall under NRCP 60(b) since they do not seek to have the divorce decree set aside. An action for fraud, other than that upon a court, may be brought in any court with general jurisdiction over the parties. The Third Judicial District Court has jurisdiction over the parties in this case, since it is their place of residence.<sup>5</sup> Therefore, the Third Judicial District Court erred by dismissing these causes of action for lack of jurisdiction.

Nevertheless, we affirm the district court's order dismissing Raylene's complaint due to her failure to plead fraud with particularity. NRCP 9(b) provides, "In all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity." "The circumstances that must be detailed include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake."<sup>6</sup>

Raylene's complaint fails to reasonably specify the time at which the fraud occurred, to whom the representations were made, where

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*... continued*


of the fraud); Chewing v. Ford Motor Co., 35 F. Supp. 2d 487, 491-92 (D.S.C. 1998) (same).

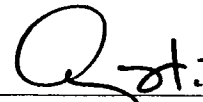
<sup>5</sup>However, the Third Judicial District Court may have dismissed the case under the doctrine of forum nonconveniens.

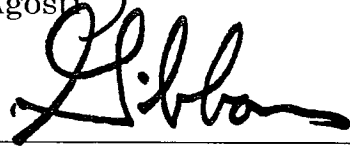
<sup>6</sup>Brown v. Kellar, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981).

the representations were made, and it does not even provide one example of the fraudulent representations. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Archie E. Blake, District Judge  
Rick Lawton  
Sinai Schroeder Mooney Boetsch Bradley & Pace  
Churchill County Clerk