IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JOSEPH ANORUO,
Appellant,
vs.
VALLEY HEALTH SYSTEM, LLC,
D/B/A SUMMERLIN HOSPITAL AND
MEDICAL CENTER,
Respondent.[1]

No. 80467-COA

FILED

MAY 14 2021

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

ORDER OF AFFIRMANCE

Joseph Anoruo appeals from a post-judgment district court order denying NRCP 60(b) relief in a contract and wrongful termination action. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Anoruo originally filed a complaint asserting claims of breach of contract, breach of the implied covenant of good faith and fair dealing, and wrongful termination against respondent Valley Health System, LLC (VHS), in connection with VHS having terminated Anoruo's employment as a clinical pharmacist. The district court presiding over that action dismissed the complaint without prejudice, determining that Anoruo was an at-will employee with no contract of employment and that his wrongful-termination claim was not based on the violation of any recognized public

[1]We direct the clerk of the court to amend the caption for this case to conform to the caption on this order.

policy. Anoruo thereafter filed a new complaint in a separate action asserting the same three state-law claims from the previous action, as well as three additional claims alleging unlawful discrimination based on national origin, retaliation and interference under the Family Medical Leave Act (FMLA), and violation of his equal-protection rights under the Fourteenth Amendment. Before serving that complaint, Anoruo filed a first amended complaint setting forth the same six causes of action, which he then served on VHS.

VHS removed the action to the United States District Court for the District of Nevada on grounds of federal question jurisdiction. The federal district court dismissed Anoruo's federal claims with prejudice, declined to exercise supplemental jurisdiction over the remaining state claims, and remanded the case to the Eighth Judicial District Court. On remand, VHS moved to dismiss Anoruo's remaining claims, and Anoruo moved to amend his complaint. He also filed multiple amended complaints while VHS's motion was pending, despite having never been granted leave to do so.

The district court ultimately granted VHS's motion in a written order, dismissing Anoruo's remaining claims with prejudice and denying leave to amend. Anoruo moved for reconsideration pursuant to NRCP 59(e) and to set the judgment aside under NRCP 60(b), which the district court denied. Anoruo then timely filed a notice of appeal from the order dismissing his complaint, but the supreme court dismissed the appeal after Anoruo failed to pay the filing fee. *Anoruo v. Valley Health System, LLC*, Docket No. 78600 (Order Dismissing Appeal, June 26, 2019). Anoruo then filed another motion in the district court for NRCP 60(b) relief, this time

seeking relief from the previous order denying relief under NRCP 59(e) and NRCP 60(b), as well as the order of dismissal.[2] The district court denied that motion, and this appeal followed.

"The district court has wide discretion in deciding whether to grant or deny a motion to set aside a judgment under NRCP 60(b). Its determination will not be disturbed on appeal absent an abuse of discretion." *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996).

Anoruo presents multiple arguments on appeal in favor of reversal. He first takes issue with the district court's statement in the order appealed from that all of Anoruo's claims were previously dismissed on April 8, 2017. Specifically, he contends that his claims were dismissed without prejudice on that date and that he therefore had the right to file another complaint. Although Anoruo is correct on this point, the district court's misstatement was harmless in light of the fact that Anoruo did refile his claims and the district court later dismissed them with prejudice following remand from the federal district court. *See Wyeth v. Rowatt*, 126 Nev. 446, 465, 244 P.3d 765, 778 (2010) ("When an error is harmless, reversal is not warranted."); *cf.* NRCP 61 ("At every stage of the proceeding,

---

[2]Anoruo's motion was improper to the extent it sought relief from the previous order denying relief under NRCP 59(e) and NRCP 60(b), as that order was not a final judgment, and NRCP 60(b) only permits parties to seek relief from final judgments. *Barry v. Lindner*, 119 Nev. 661, 669, 81 P.3d 537, 542 (2003) ("[W]e note that NRCP 60(b) applies only to final judgments."), *superseded by rule on other grounds as stated in LaBarbera v. Wynn Las Vegas, LLC*, 134 Nev. 393, 395, 422 P.3d 138, 140 (2018).

the court must disregard all errors and defects that do not affect any party's substantial rights.").

Anoruo next contends that the district court incorrectly concluded that it lacked authority to decide the second NRCP 60(b) motion because the supreme court had previously dismissed the appeal from the final judgment. We note that the district court did not support this conclusion with any authority, and nothing in NRCP 60 indicates that the dismissal of an appeal from the final judgment for failure to pay the filing fee—which does not in any way pass upon the legal merits of the case—impacts either a party's right to file a motion to set that judgment aside under NRCP 60(b) or the district court's power to rule on such a motion. *See* NRCP 60(c)(1) (setting forth when a motion under NRCP 60(b) must be filed). And we have not located any authorities in support of the district court's decision on this point in our own research.

Regardless, in spite of this apparent error, Anoruo fails to demonstrate that he is entitled to relief. He essentially contends that the district court should have reached his argument that an amended complaint remains pending below, that the federal district court allowed for such an amendment by acknowledging his remaining state-law claims, and that VHS failed to answer the amended complaint and is therefore in default. But even assuming the federal district court had the power to compel the state court to allow Anoruo to file an amended complaint, the federal district court issued no such order. Rather, as argued repeatedly by VHS below, the federal district court merely remanded the state claims to state court, informed Anoruo that he could seek to amend his complaint in that court if he so desired, and noted that the state court would have the power to decide

how to address the state claims moving forward. Moreover, in making this argument, Anoruo largely ignores the extent to which the district court dismissed his state claims with prejudice and denied leave to amend following remand, as he fails to provide any cogent argument in support of how the district court supposedly abused its discretion by denying leave to amend and, if it did, how that warrants relief under the specific grounds set forth in NRCP 60(b). *See* NRCP 15(a) (2005) (providing that, once a party has amended his complaint once as a matter of course, he "may amend [his] pleading only by leave of court or by written consent of the adverse party");[3] *Holcomb Condo. Homeowners' Ass'n v. Stewart Venture, LLC*, 129 Nev. 181, 191, 300 P.3d 124, 131 (2013) ("[T]his court will not disturb a trial court's denial of leave to amend absent an abuse of discretion."); *Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate court need not consider claims unsupported by cogent argument). Accordingly, any error on this point was likewise harmless.[4] *See Wyeth*, 126 Nev. at 465, 244 P.3d at 778.

---

[3]The Nevada Rules of Civil Procedure were amended effective March 1, 2019. *See In re Creating a Comm. to Update & Revise the Nev. Rules of Civil Procedure*, ADKT 522 (Order Amending the Rules of Civil Procedure, the Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, December 31, 2018). Accordingly, we cite the version of NRCP 15 in effect at the time Anoruo sought leave to file an amended complaint in this matter.

[4]The district court also stated in its order that Anoruo was challenging orders issued in a different case and that the court therefore lacked authority to consider the motion. But Anoruo was, in fact, requesting

Finally, Anoruo challenges both the federal and state court dismissals on their merits. But this court has no authority to review the federal district court's order of dismissal. *See Santora v. Miklus*, 506 A.2d 549, 554 (Conn. 1986) ("In the interests of finality and judicial economy, challenges to a court order should be brought to the court that issued the order or to an appellate court of proper jurisdiction."); *see also Atl. Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 286 (1970) (stating that "we have had in this country two essentially separate legal systems" and "[e]ach system proceeds independently of the other"). And with respect to the underlying dismissal in the state case, Anoruo could have challenged the merits of that decision on direct appeal, but—as noted previously—he failed to pay the filing fee in connection with that appeal, which resulted in its dismissal. Accordingly, our review is confined to the district court's order denying NRCP 60(b) relief. *See Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 63, 732 P.2d 1376, 1378-79 (1987) (concluding that the court lacked jurisdiction to consider the appeal as a direct challenge to the final judgment where the appeal was not timely taken from that judgment and was instead taken from an order denying NRCP 60(b) relief, and limiting the scope of review to that order only).

With respect to the district court's decision on this point, the only ground Anoruo presents in support of NRCP 60(b) relief is that applying the dismissal prospectively is supposedly inequitable. *See* NRCP

---

that the court set aside two previous orders entered in the underlying case. Nevertheless, for the aforementioned reasons, any error on this point was also harmless.

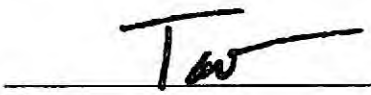
60(b)(5) (providing that the court may relieve a party from a final judgment on grounds that "applying it prospectively is no longer equitable"). Although that ground for relief was only recently added to NRCP 60—which previously only allowed courts to set aside injunctions if it was no longer equitable to apply them prospectively, *see* NRCP 60(b)(5) (2005)—and neither our supreme court nor this court have yet had occasion to discuss the standards governing the new NRCP 60(b)(5), the Supreme Court of the United States has set forth standards governing a materially identical provision in FRCP 60(b)(5). *See Horne v. Flores*, 557 U.S. 433, 447 (2009); *Exec. Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) ("Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts." (internal quotation marks omitted)).

As stated by the Supreme Court, "Rule 60(b)(5) may not be used to challenge the legal conclusions on which a prior judgment or order rests, but the Rule provides a means by which a party can ask a court to modify or vacate a judgment or order if 'a significant change either in factual conditions or in law' renders continued enforcement 'detrimental to the public interest.'" *Horne*, 557 U.S. at 447 (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992)). Accordingly, to the extent Anoruo simply reargues the merits of the underlying dismissal, we reject his arguments. And—assuming the dismissal even constitutes a judgment with "prospective application" sufficient to fall within the rule, *see Tapper v. Hearn*, 833 F.3d 166, 171 (2d Cir. 2016) ("[A] final judgment or order has 'prospective application' for purposes of Rule 60(b)(5) only where it is

executory or involves the supervision of changing conduct or conditions . . . ." (internal quotation marks omitted))—the only possible change in law or factual conditions Anoruo points to in support of relief under NRCP 60(b)(5) is an order from the federal district court denying his second motion to reconsider the dismissal in that case, in which Anoruo contends that the federal court issued a ruling requiring the state court to grant him leave to file an amended complaint. But as set forth above, this argument is without merit. Thus, under these circumstances, we affirm the district court's denial of NRCP 60(b) relief.

It is so ORDERED.[5]

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

[5]To the extent Anoruo presents arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given the disposition of this appeal.

cc: Hon. Mary Kay Holthus, District Judge
Joseph Anoruo
Littler Mendelson, P.C./Las Vegas
Eighth District Court Clerk