

IN THE SUPREME COURT OF THE STATE OF NEVADA

ADDISON HESSER, AN INDIVIDUAL,  
Appellant,

vs.

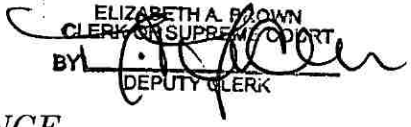
DANON BLEA, AN INDIVIDUAL; AND  
AZTECA REAL ESTATE PARTNERS,  
LLC, A NEVADA LIMITED LIABILITY  
COMPANY,

Respondents.

No. 89093

FILED

MAR 09 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a district court order dismissing a complaint for failure to state a claim for relief. Eighth Judicial District Court, Clark County; Timothy C. Williams, Judge.

Appellant Addison Hesser is a beneficiary of the Royal Union Trust (RUT), which was an appellant in *Royal Essex, LLC v. Azteca Real Est. Partners LLC*, No. 87401, 2025 WL 2426710 (Nev. Aug. 21, 2025) (Order of Affirmance). This court in that case determined that all Royal parties—including the RUT—were jointly and severally liable to respondents Azteca Real Estate Partners and Danon Blea for all claims and counterclaims pertaining to proceeds that the Royal parties stood to gain from the Essex Real Estate Partners, LLC's bankruptcy estate. *Id.* at \*5. The district court entered judgment in September 2023, which we affirmed in *Royal Essex*.

Hesser filed a complaint in district court before a new judge, alleging that Blea and Azteca failed to notify Hesser of “the existence and

nature” of counterclaims asserted against the RUT in the underlying *Royal Essex* case, in violation of NRS 163.120(2) (prohibiting entry of judgment for a plaintiff against a trust unless the plaintiff proves they notified all beneficiaries with “a present interest . . . of the existence and nature of the action” and creating an obligation for the trustee to furnish a beneficiary list upon the plaintiff’s written demand). Hesser served in the U.S. Army and was stationed abroad throughout the district court litigation preceding *Royal Essex*. Hesser sought to vacate the *Royal Essex* judgment based on lack of notice, arguing that he was unable to participate in the litigation or defend against the counterclaims, which led to a prejudicial judgment against the RUT that adversely affected his interest as a beneficiary. Blea and Azteca filed a NRCP 12(b)(5) motion to dismiss which the district court granted, determining that Hesser’s complaint was procedurally improper under NRCP 60, as “[c]ourts of co-equal jurisdiction lack authority to overturn the acts of one another.” Hesser appeals, arguing that his complaint met the requirements for an independent action under NRCP 60(d)(1). Because Hesser fails to show that the *Royal Essex* judgment worked a grave miscarriage of justice, as is required to sustain an independent action under our caselaw, we disagree and affirm.

*Standard of review*

Blea’s motion to dismiss attached excerpts from the *Royal Essex* litigation, which the district court considered without objection. Accordingly, we review the district court’s order under the standards applicable to a review of a motion for summary judgment. *Bonnell v. Lawrence*, 128 Nev. 394, 400, 282 P.3d 712, 715-16 (2012); *Witherow v. State, Bd. of Parole Comm’rs*, 123 Nev. 305, 308, 167 P.3d 408, 409 (2007) (holding that when a district court considers extrinsic matters in deciding a

motion to dismiss, we view the disposition “as if it [had] granted summary judgment”). Further, because Hesser “brought this suit as an independent action, before a new district court judge, who determined its viability as a matter of law,” “*de novo* review [ ] applies.” *Bonnell*, 128 Nev. at 401, 282 P.3d at 716 (citation modified); *A Cab, LLC v. Murray*, 137 Nev. 805, 813, 501 P.3d 961, 971 (2021) (“A district court’s decision to grant summary judgment is reviewed *de novo*.”).

*Hesser failed to meet the requirements for an independent action under NRCPP 60(d)*

NRCPP 60(b) provides that upon a “motion and just terms, the court may relieve a party or its legal representative from a final judgment . . . .” Under NRCPP 60(d)(1), “[t]his rule does not limit a court’s power to . . . entertain an independent action to relieve a party from a judgment . . . .” However, after the six-month period to obtain relief from a judgment under Rule 60(b) has elapsed, an independent action is available only in exceptional circumstances “to prevent a grave miscarriage of justice” and of such magnitude as to warrant departure from the strict principles of *res judicata*. *Bonnell*, 128 Nev. at 402, 282 P.3d at 716-17 (quoting *United States v. Beggerly*, 524 U.S. 38, 47 (1998)). Hesser argues that he properly sought relief through an independent action under NRCPP 60(d)(1) because he lacked standing to bring an NRCPP 60(b) motion as a non-party to the underlying lawsuit. He further contends that Blea and Azteca’s failure to notify him of the *Royal Essex* litigation amounted to a due process violation that warrants this independent action. Blea counters that Hesser cannot sustain an independent action under NRCPP 60(d) because he has not offered a good defense on the merits of the underlying case, as required to meet the “grave miscarriage of justice” standard enunciated in *Bonnell*, 128 Nev. At 400, 282 P.3d at 715. We agree with Blea.

In *Bonnell*, the district court dismissed a mother's independent action seeking relief from an order granting an unopposed motion for summary judgment in a prior property dispute she had filed against her daughter and son-in-law. *Id.* at 396-98, 282 P.3d at 713-14. The mother did not appeal the order granting the motion for summary judgment; instead, she filed a new lawsuit a year later, claiming she could proceed by independent action to vacate the judgment under the rule now found in NRCP 60(d).<sup>1</sup> *Id.* at 397, 282 P.3d at 714. She claimed that she received inadequate notice of the summary judgment hearing and would have asserted a meritorious defense in those proceedings had she been given proper notice. *Id.* The district court dismissed the mother's independent action on res judicata grounds. *Id.* at 398, 282 P.3d at 714. We affirmed, concluding that the mother's allegations did not meet the "demanding standard" of showing a "grave miscarriage of justice" where her chances of success in raising her defense to summary judgment were "not as great as she seem[ed] to assume," and she had an appropriate remedy via a timely NRCP 59 motion or an appeal. *Id.* at 403-04, 282 P.3d at 718-19 (citing *Beggerly*, 524 U.S. at 41 (setting forth the five required elements for an independent action in federal courts, including "a good defense to the alleged cause of action on which the judgment is founded" (internal quotation marks omitted))).

Unlike the mother in *Bonnell*, Hesser here presents no argument that he had a valid defense on the merits in the *Royal Essex* case as is required to meet the grave-miscarriage-of-justice standard. Instead, he contends that a party need not have an underlying merits defense where

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<sup>1</sup>When *Bonnell* was decided, NRCP 60(b) included the independent action provision now found in NRCP 60(d).

that party did not receive notice in violation of their Fourteenth Amendment procedural right to due process. To his point, the U.S. Supreme Court has recognized that “[w]here a person has been deprived of property in a manner contrary to the most basic tenets of due process, it is no answer to say that in his particular case due process of law would have led to the same result because he had no adequate defense upon the merits.” *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 86-87 (1988) (citation modified). But, even assuming, without deciding, that NRS 163.120(2) applied and was not complied with, Hesser mistakenly conflates such lack of statutory compliance with a procedural due process violation under the Fourteenth Amendment.

This court has long recognized that the trustee is the real party in interest entitled to bring suit and defend on the trust’s behalf. *Causey v. Carpenters S. Nev. Vacation Tr.*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979) (“It is the trustee, or trustees, rather than the trust itself that is entitled to bring suit.”); *In re Richard H. Goldstein Irrevocable Tr.*, 142 Nev., Adv. Op. 41, 575 P.3d 72, 76 (2025); *see also* NRCP 17(a)(1)(E) (making “a trustee of an express trust” the real party in interest “without joining the person for whose benefit the action is brought”). While courts recognize exceptions for beneficiaries to sue third parties, those circumstances are not present here, where the RUT trustee initiated the underlying lawsuit and vigorously defended against Azteca and Blea’s counterclaims. *Hughes v. Tower Park Props., LLC*, 803 F.3d 450, 459 (9th Cir. 2015) (A “trust beneficiary is not the entity positioned to take legal recourse to protect the trust assets, unless the beneficiary is seeking only to enforce the terms of the trust.”); *see also* Restatement (Third) of Trusts: Proceedings Against a Third Party § 107(2) cmt. c (Am. L. Inst. 2012) (explaining that a beneficiary may bring or defend

suit where “the trustee is unable, unavailable, unsuitable, or improperly failing to protect the beneficiary’s interest”). Nor does Hesser contend that the trustee improperly failed to protect his interests in *Royal Essex*. Indeed, the RUT expressly grants the trustee the authority “to institute, compromise, and defend actions and proceedings,” and to “employ counsel” to “do all such acts, take all such proceedings and exercise all such rights and privileges . . . with relation to such property as if the absolute owner thereof and in connection therewith to enter into any covenants or agreements binding the trust estate.” So, this case does not fall under any recognized exception requiring a beneficiary’s participation notwithstanding the trustee’s active role in litigating the case.

The procedural due process analysis also requires an established “liberty or property interest which has been interfered with.” *Malfitano v. Cnty. of Storey*, 133 Nev. 276, 282, 396 P.3d 815, 819 (2017) (citation modified). Because the *Royal Essex* judgment only held the RUT and the other counter-defendants “jointly and severally liable to Azteca in the amount of any and all distributions, *if any*, that are made from the Essex bankruptcy,” Hesser’s alleged property interest affected by the judgment as an RUT beneficiary was speculative at best. The judgment contains no language that would threaten the RUT’s other assets that were not the subject of the *Royal Essex* litigation. The fact that the district court in the underlying case found that the Royal counter-defendants engaged in extensive inequitable conduct and breaches of fiduciary duty further supports that the RUT’s interest in the future distribution of bankruptcy proceeds was contingent, remote, and insufficient to support a cognizable property interest for Hesser’s due process claim. *Royal Essex*, No. 87401, 2025 WL 2426710, at \*4. We therefore conclude that Hesser’s procedural

due process rights were not violated, even assuming NRS 163.120(2) entitled him to notice.

Because Hesser failed to satisfy the merits-defense requirement from *Bonnell*, he cannot show that allowing the *Royal Essex* judgment to stand would work a “grave miscarriage of justice.” 128 Nev. at 404, 282 P.3d at 718-19. Thus, the district court correctly dismissed Hesser’s complaint for failing to satisfy the requirements for an independent action under NRCP 60(d). *In re Guardianship of Jones*, 139 Nev. 139, 153-54, 531 P.3d 1236, 1248 (2023) (explaining that we can affirm on any ground supported by the record, even if the district court did not rely on that ground). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Herndon

  
\_\_\_\_\_, J.  
Pickering

  
\_\_\_\_\_, J.  
Cadish

cc: Hon. Timothy C. Williams, District Judge  
Thomas J. Tanksley, Settlement Judge  
Santacroce Law Offices, Ltd.  
Fox Rothschild, LLP/Las Vegas  
Eighth District Court Clerk