

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CARY MCNAIR, JR.,  
Appellant,  
vs.  
PALMETTO TRUST COMPANY, LLC, A  
NEVADA LIMITED LIABILITY  
COMPANY,  
Respondent.

No. 89959

**FILED**

MAR 27 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

McNair appeals from a district court order granting a motion to dismiss a complaint seeking advancement of litigation costs. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

This matter concerns a corporate dispute involving Palmetto Trust Company (PTC), a Nevada LLC, which operates as trustee for two family trusts. The family trusts in turn own several subsidiary entities, including McNair Interests (MI). In 2018, appellant Cary McNair was made manager of MI and a director of PTC. Under McNair's leadership, the companies' performance faltered and McNair was accused of self-dealing and funneling trust assets to enrich himself and those close to him. The disputes between McNair and the PTC board resulted in multiple lawsuits and the PTC board ultimately removed McNair from his positions.

In the first lawsuit, PTC sued McNair and his business allies in Texas. In response, on July 26, 2024, McNair brought a separate action in Texas against MI seeking advancement of his litigation expenses. PTC then

amended its Texas lawsuit against McNair to include a request for a declaratory judgment that PTC was not required to advance McNair's costs. The Texas court ultimately consolidated McNair's Texas advancement lawsuit against MI into the lawsuit brought against him by PTC.

While those matters were pending before the Texas court, on August 2, 2024, McNair filed a separate action in Nevada against PTC seeking the advancement of his litigation expenses. The Nevada district court ultimately dismissed McNair's advancement lawsuit against PTC, concluding that the first-to-file rule dictated that the action proceed in Texas, rather than in Nevada. McNair now appeals the dismissal.

We review a district court's application of the first-to-file rule for an abuse of discretion. *Mesi v. Mesi*, 136 Nev. 748, 753, 478 P.3d 366, 371 (2020). This rule is a "generally recognized doctrine of federal comity which permits a district court to decline jurisdiction over an action when a complaint involving the same parties and issues has already been filed in another district." *Id.* at 752 (quoting *Pacesetter Sys., Inc. v. Medtronic, Inc.*, 678 F.2d 93, 94-95 (9th Cir. 1982)). To evaluate whether the first-in-time rule applies, this court has adopted the Ninth Circuit's three-factor test established in *Alltrade, Inc. v. Uniweld Products, Inc.*, 946 F.2d 622 (9th Cir. 1991). *Mesi*, 136 Nev. at 752, 478 P.3d at 370. First, for the rule to apply, the parties and the issues in the two suits must be "substantially the same, even if not strictly identical." *Id.* (citing *Kohn Law Grp., Inc. v. Auto Parts Mfg. Miss., Inc.*, 787 F.3d 1237, 1240 (9th Cir. 2015)). Second, the first suit takes priority, absent special circumstances or equitable concerns

that militate against the rule's application. *Id.* Finally, under this test, district courts evaluate whether the second-filed action should be dismissed or, in circumstances where the first-filed action presents a likelihood of being dismissed, stayed. *Id.* at 753, 478 P.3d at 371.

We conclude the district court did not abuse its discretion in applying the first-to-file rule to McNair's Nevada lawsuit. First, the record indicates PTC filed its Texas action before McNair sued in Nevada. Also, prior to filing his Nevada lawsuit against PTC, McNair also sued MI in Texas for advancement of his litigation costs. The Texas court ultimately merged this lawsuit against MI into PTC's ongoing fraud suit against McNair. Accordingly, we conclude the district court did not abuse its discretion in finding the Nevada lawsuit was substantially the same as the ongoing Texas litigation.

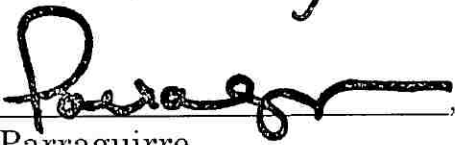
Additionally, McNair failed to demonstrate any equitable reason to avoid application of this rule. A review of the record indicates the Texas court did not accede to McNair's advancement lawsuit against MI, and McNair now requests the same relief in Nevada without providing sufficient justification for this second bite at the apple. Therefore, we conclude the district court similarly did not abuse its discretion in finding no equitable reasons to eschew the first-to-file rule here.


Finally, we conclude McNair failed to demonstrate the district court abused its discretion in dismissing, rather than staying, the case. Under *Mesi*, this factor comes into play when "a motion to dismiss is pending in the first-filed action." 136 Nev. at 753, 478 P.3d at 371. Here, the district court properly concluded that no such motion was pending in the Texas litigation. Though the court noted that the parties had previously challenged the Texas court's jurisdiction, both the Texas district court and

the probate court had denied these challenges. Therefore, because there was no reasonable likelihood of the Texas court dismissing the action, the district court did not abuse its discretion in dismissing the Nevada case, rather than staying it. Accordingly, we

ORDER the judgment of the district court AFFIRMED.

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

  
\_\_\_\_\_, J.  
Parraguirre

  
\_\_\_\_\_, J.  
Bell

cc: Hon. Barry L. Breslow, District Judge  
David Wasick, Settlement Judge  
Solomon Dwiggin, Freer & Steadman, Ltd.  
Ahmad, Zavitsanos, & Mensing, PLLC/Houston  
Maupin, Cox & LeGoy  
Reynolds Frizzell LLP  
Washoe District Court Clerk