

IN THE SUPREME COURT OF THE STATE OF NEVADA

GORDON GRAVELLE, D/B/A  
CODEPRO MANUFACTURING,  
Appellant,  
vs.  
JIM WEBB, D/B/A J. WEBB LOCK &  
KEY,  
Respondent.

No. 42213

**FILED**

APR 24 2006

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

ORDER OF AFFIRMANCE

This is a proper person appeal from a district court order dismissing an independent action for relief from a final judgment. Eighth Judicial District Court, Clark County; Jessie Elizabeth Walsh, Judge.

On November 21, 2002, the district court granted summary judgment to respondent Jim Webb in Gravelle v. Webb, Case No. A435486,<sup>1</sup> which was the subject of a separate appeal in Docket No. 40682. Appellant Gordon Gravelle, thereafter, in proper person, filed a separate district court complaint in Case No. A470100, containing claims nearly identical to those in the prior action and requesting relief from the summary judgment. The district court dismissed the complaint and

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<sup>1</sup>Recently, this court affirmed the district court's order granting summary judgment to Webb. See Gravelle v. Webb, Docket No. 40682 (Order of Affirmance, April \_\_, 2006).

denied relief, concluding that the doctrines of collateral estoppel and res judicata barred Gravelle's claims. In addition to dismissing Gravelle's complaint, the district court's order also purports to award costs and attorney fees to Webb. Gravelle appeals.

Whether the district court properly dismissed an action on res judicata grounds is a legal question that this court reviews de novo.<sup>2</sup> Gravelle contends that the district court erroneously dismissed his complaint because it constituted an independent action for relief, allowable under NRC 60(b). We conclude that although the district court apparently failed to consider the appropriate standard for independent actions for relief from a judgment, the court reached the correct result.<sup>3</sup>

Ostensibly, the district court dismissed the action based on the doctrines of collateral estoppel and res judicata.<sup>4</sup> Because, the factual allegations underlying Gravelle's second action are fundamentally identical to those in his first action, to the extent that Gravelle's second

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<sup>2</sup>Pickett v. Comanche Construction, Inc., 108 Nev. 422, 426, 836 P.2d 44, 45 (1992) (noting that whether the doctrine of res judicata bars a party's claim is a legal question); SIIS v. United Exposition Services Co., 109 Nev. 28, 30, 846 P.2d 294, 295 (1993) (stating that "[q]uestions of law are reviewed de novo.").

<sup>3</sup>See Milender v. Marcum, 110 Nev. 972, 977, 879 P.2d 748, 751 (1994) (stating that this court may affirm rulings of the district court on grounds different from those relied upon below).

<sup>4</sup>See generally Executive Mgmt. v. Ticor Title Ins. Co., 114 Nev. 823, 835, 963 P.2d 465, 473 (1998).

action involved repeated claims for relief, the district court properly invoked those doctrines in dismissing his claims.<sup>5</sup>

Gravelle, however, citing NRCP 60(b)(1) (mistake, inadvertence, surprise, or excusable neglect) and (2) (newly discovered evidence), also brought an independent action to obtain relief from the summary judgment based, in part, on his inability to retain counsel and for alleged attorney misconduct by Webb's counsel.<sup>6</sup> Ordinarily, requests for relief under NRCP 60(b)(1) and (2) must be made within six months of service of notice of the relevant order's entry. But, although Gravelle's request for NRCP 60(b) relief was apparently made outside of this timeframe, NRCP 60(b) permits a court to "entertain an independent action" for relief from a judgment, even after the time period for bringing motions under NRCP 60(b)(1) and (2) has expired.<sup>7</sup> Thus, Gravelle's independent action was not barred under the doctrines of collateral estoppel or res judicata.<sup>8</sup>

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<sup>5</sup>See Ticor Title Ins. Co., 114 Nev. at 835, 963 P.2d at 473 (providing that, generally, the doctrines of collateral estoppel and res judicata bar a subsequent action with respect to all issues and claims that could have been litigated in a prior action).

<sup>6</sup>NRCP 60(b) has since been amended, and the former rule applies. Notwithstanding, the relevant parts of the new rule contain essentially the same language as the former rule.

<sup>7</sup>Nevada Industrial Dev. v. Benedetti, 103 Nev. 360, 364-65, 741 P.2d 802, 805 (1987).

<sup>8</sup>See Pickett, 108 Nev. at 427, 836 P.2d at 45 (1992).

Nevertheless, only a demonstration of gross injustice will constitute a basis for relief in an independent action centered on the grounds set forth in NRCP 60(b).<sup>9</sup>

Having reviewed the record, we conclude that Gravelle's request for relief from the summary judgment is devoid of any allegations of injustice sufficient to require a departure from the ordinary application of res judicata. Moreover, in light of our affirmance of the district court's order granting summary judgment in the related appeal<sup>10</sup> in which he raised the same issues of alleged inability to retain counsel and attorney misconduct we conclude that, as a matter of law, Gravelle is not entitled to relief.<sup>11</sup> Accordingly, the district court properly denied relief from the

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<sup>9</sup>See *id.*; United States v. Beggerly, 524 U.S. 38, 46 (1998) (analyzing the federal counterpart to NRCP 60(b) and providing that independent actions designed to set aside a judgment must "be reserved for those cases of 'injustices which . . . are deemed sufficiently gross to demand a departure' from rigid adherence to the doctrine of res judicata") (quoting Hazel-Atlas Co. v. Hartford Co., 322 U.S. 238, 244 (1944)); *id.* at 47 (providing that grounds for an independent action are available only to "prevent a grave miscarriage of justice," which is a "demanding standard").

<sup>10</sup>See Gravelle, Docket No. 40682.

<sup>11</sup>See Beggerly, 524 U.S. at 46, 47.

summary judgment even if the court did so without fully considering the merits of Gravelle's request.<sup>12</sup>

Gravelle further challenges the district court's purported award of attorney fees to Webb. Although the order dismissing Gravelle's action provided that Webb was awarded the attorney fees associated with the motion to dismiss, the order provided neither the amount of, nor a basis for, the award.<sup>13</sup> Further, there is no indication in the record that the district court subsequently entered an appealable special order after final judgment, providing a basis for and setting the amount of any award of attorney fees.<sup>14</sup> Therefore, as it appears that no attorney fees award exists, Gravelle's attempt to challenge any such award is premature, and we are without jurisdiction to consider it.<sup>15</sup>

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<sup>12</sup>See Milender, 110 Nev. at 977, 879 P.2d at 751 (stating that this court may affirm the district court's decision on grounds different from those relied on by the district court).

<sup>13</sup>See generally Henry Prods., Inc. v. Tarmu, 114 Nev. 1017, 1020, 967 P.2d 444, 446 (1998) (noting that the failure to provide a basis for an award of attorney fees is "an arbitrary and capricious action, and, thus, is an abuse of discretion").

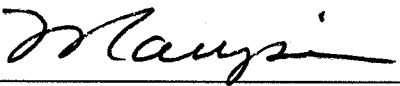
<sup>14</sup>We note that, while Webb's subsequent application for an award of attorney fees provides an amount and implicates a basis on which to base it, there is no indication in the record that the district court ruled on this application.

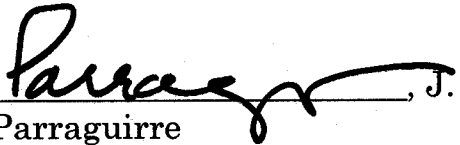
<sup>15</sup>See Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (stating that a post-judgment order awarding attorney fees and costs is independently appealable as a special order after final judgment  
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Accordingly, we affirm the district court's order dismissing Gravelle's action.

It is so ORDERED.<sup>16</sup>

  
\_\_\_\_\_, C.J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

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

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under NRAP 3A(b)(2)); see also Rust v. Clark Cty. School District, 103 Nev. 686, 688, 747 P.2d 1380, 1381 (1987) (noting that “a premature notice of appeal fails to vest jurisdiction in this court”).

<sup>16</sup>In light of this order, we vacate our February 23, 2006 order granting Gravelle leave to file briefs in proper person and setting the briefing schedule, and we deny as moot Gravelle's emergency motion to hold this appeal in abeyance or for an extension of time in which to file his opening brief.

cc: Hon. Jessie Elizabeth Walsh, District Judge  
Gordon Gravelle  
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP  
Clark County Clerk