

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRIAN KAMEDULA,
Appellant,
vs.
DESIREE HULTENSCHMIDT;
KENNETH D. TABER; DON POAG;
KATHERINE HEGGE; DWAYNE DEAL;
WILLIAM SANDIE; ROBERT
LEGRAND; CHARLES SCHARDIN; R.
BRUCE BANNISTER; ROMEO
ARANAS; JAMES G. COX; THE STATE
OF NEVADA BOARD OF PRISON
COMMISSIONERS; SGT. STARLIN
GENTRY; C. RUTHERFORD; LCC
DENTIST SHEPARD; C/O J. ALLEN;
NEVADA DEPARTMENT OF
CORRECTIONS; AND THE STATE OF
NEVADA,
Respondents.

No. 66787

FILED

AUG 31 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

This is an appeal from a district court order dismissing a civil rights and torts complaint. Eleventh Judicial District Court, Pershing County; Richard Wagner, Judge.

In January 2010, appellant, an inmate, filed a complaint against the Nevada Department of Corrections (NDOC) and certain of its employees for failing to provide him adequate medical and dental care. After that case was removed to federal court, appellant and the defendants in the federal case entered into a settlement agreement wherein appellant received monetary compensation in exchange for the release of the claims pending in that case and the waiver of any future claims relating to the facts of that complaint. Although issues pertaining to appellant's future dental care were not mentioned in the settlement agreement, shortly after

appellant signed the agreement, he met with an NDOC dentist to get new dentures.¹

Appellant alleges that when he met with the NDOC dentist in October 2012 to get new dentures, the dentures he received did not fit properly and the dentist indicated new ones would have to be made. Thereafter, appellant made requests to see the dentist, but he claims these requests were denied. Appellant also filed a grievance regarding the NDOC's failure to provide him with his new dentures, which was denied at all levels. In January 2014, when appellant still did not have new dentures, he filed the underlying complaint against the NDOC and certain of its employees in state court. In addition to claims regarding the lack of dental care, appellant's complaint included claims regarding the taking of private property, conversion, unjust enrichment, retaliation, and supervisor liability.

Respondents then moved to dismiss the complaint, alleging it was barred by the prior settlement agreement because appellant had waived his right to pursue future claims related to the claims raised in the federal case. Appellant opposed this motion, asserting his claims could not be barred by the settlement agreement as the facts that gave rise to his new complaint did not occur until after the settlement agreement had been signed.

Instead of dismissing the case, the district court scheduled status hearings to determine whether appellant had been provided new

¹Appellant alleges, and respondents do not dispute, that during the pendency of his federal case, appellant moved prisons, and upon receiving his personal items at the new prison, his ill-fitting dentures, which had been in the custody of NDOC, were completely broken. Appellant claims that because he no longer had ill-fitting dentures and would be provided new ones, he decided to settle his federal case.

dentures. At the first two such hearings, held on June 10, 2014, and July 22, 2014, it was revealed that appellant's dentures had not yet been made. Finally, at a status hearing on September 23, 2014, nearly two years after appellant's dentures were broken, appellant confirmed that he had received his new dentures earlier that month and that they fit properly. One week thereafter, the district court dismissed appellant's complaint. In so doing, the district court found appellant "had knowledge of these alleged dental issues prior to signing the Settlement Agreement" and thus the claims in the underlying complaint were barred by the releases in that agreement, which released all of appellant's claims, known or unknown, relating to the facts in the federal complaint. This appeal followed.

On appeal, appellant argues the district court erred in dismissing his complaint based on the settlement agreement because the claims at issue in the underlying case arose after the facts alleged in his federal complaint. He also argues that certain of his underlying causes of action did not relate to the issues regarding the lack of medical and dental care addressed in his federal complaint, and thus could not be barred by the settlement agreement. Respondents simply assert, as they did below, that the settlement agreement is a bar to all of appellant's claims in the underlying case.

With regard to appellant's first argument, we conclude these claims were not barred by the settlement agreement that resolved the federal case. Settlement agreements are interpreted according to contract law, and this court's review of such interpretations is conducted *de novo*. *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005). Here, the parties' agreement waived only appellant's right to pursue further claims "in relation to the facts and circumstances asserted in the [federal] Complaint." And the facts and circumstances giving rise to appellant's federal complaint were ill-fitting dentures, poor dental care, and poor

medical care from 2005 until the filing of that complaint in 2010. In contrast, the underlying complaint was based on allegations that respondents failed to provide adequate dental care from 2011 forward, and in particular, that they failed to provide adequate dentures after appellant learned that his new dentures did not fit properly following the signing of the settlement agreement.

Under these circumstances, the district court's and respondents' assertions that appellant knew of the claims raised in the underlying complaint when he signed the settlement agreement does not support the dismissal of appellant's underlying claims because the settlement agreement only barred future claims relating to the facts alleged in the federal complaint, *see Clark v. Columbia/HCA Info. Servs., Inc.*, 117 Nev. 468, 480-81, 25 P.3d 215, 223-24 (2001) (refusing to apply a contractual release to a claim that arose after the release was signed in part because the contractual release did not expressly prohibit the future claim), and the claims raised below are not so related. Indeed, respondents do not point to any enforceable² language in the settlement agreement that purports to generally waive all of appellant's future claims regarding his medical and dental care.

Moreover, if respondents continued to provide inadequate dental care after the federal complaint was filed and after the settlement agreement was signed, as appellant alleges, that course of conduct would give rise to additional causes of action not related to the claims resolved by the settlement agreement. *See Lawlor v. Nat'l Screen Serv. Corp.*, 349

²While the settlement agreement does contain a broad provision purporting to waive appellant's right to bring any future claims related to his conditions of confinement, respondents concede, in their answering brief, that "a blanket agreement to waive all conditions of confinement claims . . . would be overly broad and in contravention of public policy."

U.S. 322, 327-28 (1955) (recognizing that a second suit regarding the same course of wrongful conduct as a previously decided suit is not barred by claim preclusion principles when the violations alleged in the second suit had not occurred when the first suit was filed); *Round Hill Gen. Improvement Dist. v. B-Neva, Inc.*, 96 Nev. 181, 183, 606 P.2d 176, 178 (1980) (recognizing, in analyzing a claim preclusion argument, that claims are not identical, even though the evidence supporting the claims may be similar, when evidence supporting the second claim relates to a later temporal period than evidence supporting the first claim). Therefore, we conclude that the district court erred when it determined that the settlement agreement in the federal case barred appellant's dental-care-based claims in the instant case. See *May*, 121 Nev. at 672, 119 P.3d at 1257; see also *Witherow v. State Bd. of Parole Comm'rs*, 123 Nev. 305, 307-08, 167 P.3d 408, 409 (2007) (holding that, when a district court considers matters outside the pleadings, this court will treat an order of dismissal as one for summary judgment and review it de novo).


Next we turn to appellant's assertion that his claims regarding the taking of private property, conversion, unjust enrichment, retaliation, and supervisor liability are not claims relating to improper medical and dental care, and thus, cannot be barred by the federal settlement. Indeed, the record demonstrates these claims were based on allegations that respondents improperly removed money from his inmate account and retaliated against him for filing the prior lawsuit. In their answering brief, respondents do not even attempt to demonstrate how these claims are barred by the settlement agreement, as they only generally argue that all of appellant's claims in the underlying complaint are barred. Because respondents failed to make cogent arguments on this issue, we necessarily reverse the district court's dismissal of those claims.

See Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006).

Accordingly, for the reasons set forth above, we

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.³


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Richard Wagner, Senior Judge
Brian Kamedula
Attorney General/Carson City
Pershing County Clerk

³Respondents also argue that because appellant received his dentures, all of his underlying claims became moot. In addition to seeking his dentures, however, appellant's complaint sought additional relief such as money damages. Because, as detailed above, we have concluded that appellant's claims are not barred by the settlement agreement, an actual controversy still exists, and thus, appellant's claims are not moot. *See Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (recognizing that a case is moot when there is no longer an active controversy).

And, in light of this order, we deny all relief requested in appellant's April 14, 2015, "Request for Submission and Disposition of Appeal" as moot.