

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JAMES KELLY,
Appellant,
vs.
ARCHON GAMING CORPORATION,
Respondent.

No. 77758-COA

FILED

FEB 25 2021

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

ORDER OF AFFIRMANCE

James Kelly appeals from a post-judgment district court order denying relief from a final order in a workers' compensation matter. Eighth Judicial District Court, Clark County; James Crockett, Judge.

Kelly suffered an industrial injury in 1988, which resulted in extensive litigation through multiple administrative and judicial proceedings. In a prior appeal in 2006, Kelly and respondent Archon Gaming Corporation (Archon) participated in the NRAP 16 settlement program and entered into a settlement agreement providing that Kelly was permanently and totally disabled, and that he was entitled to lifetime compensation and future medical treatment in connection with his disability, "pursuant to all statutory rights and obligations for his industrial injuries." Kelly later filed petitions for judicial review of two separate administrative decisions concerning his workers' compensation benefits, which the district court ultimately consolidated in the underlying proceedings.

In 2015, the district court entered a written order reversing the challenged administrative decisions. The district court concluded that the appeals officers had erroneously ignored the 2006 settlement agreement,

which remained controlling and governed all disputes between the parties concerning the calculation, payment, and reimbursement of Kelly's benefits. The district court also "retain[ed] jurisdiction as to [Archon's] compliance with th[e] [o]rder." A few months later, Kelly filed a motion for an order to show cause with the district court alleging in relevant part that Archon was not complying with the 2015 order or the 2006 settlement because it was refusing to provide Kelly with a copy of his claims file and because Kelly was unable to cash various checks from Archon's third-party administrator. After multiple hearings, status checks, and orders aimed at ensuring Archon's compliance, the district court entered an order in December 2017 stating that Archon had complied with the 2015 order, that the district court was terminating its retained jurisdiction, that the 2015 order and 2006 settlement remained controlling, and that the case was dismissed with prejudice and would be statistically closed.

Kelly then sought relief from that order under NRCP 59 and 60 on various grounds, and the district court ultimately entered an amended order in August 2018 because it determined that its previous order "require[d] certain amendments or clarifications." The amended order provided that the check-cashing issue was "substantially resolved," that Archon had substantially complied with the district court's order requiring production of Kelly's claims file, and that Archon had "complied with those aspects of the [2015 order]." Accordingly, the district court reiterated that it was terminating its retained jurisdiction, that the 2015 order and 2006 settlement remained controlling, and that the case would be statistically closed, but it omitted the language from the previous order dismissing the case with prejudice. Kelly then sought relief from that order, expressing concern over its scope and arguing that Archon was continuing to violate

the 2015 order and 2006 settlement such that the district court should continue to exercise jurisdiction. The district court denied Kelly's motion in a written order reaffirming the August 2018 amended order and providing that Kelly would need to address all future disputes through the workers' compensation administrative process. Kelly now appeals from the order denying his request for relief from the August 2018 order.

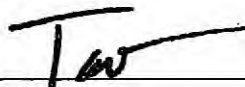
On appeal, Kelly first contends that ongoing compliance issues require the district court to continue exercising jurisdiction to enforce the 2015 order and 2006 settlement. But he ignores the extent to which he may avail himself of the scheme set forth in Nevada's Administrative Procedure Act and workers' compensation statutes, as noted by the district court and contemplated by the 2006 settlement. In light of the administrative remedies available to Kelly, we are not persuaded that the district court in any way abused its discretion or otherwise erred in terminating its jurisdiction over this matter. And although Kelly vaguely alleges that the district court violated his due-process rights by terminating its jurisdiction sua sponte and failing to give him an opportunity to respond, this contention is belied by the record, as this issue was extensively litigated below in the context of Kelly's multiple motions for relief from the district court's orders. *See Mesi v. Mesi*, 136 Nev., Adv. Op. 89, 478 P.3d 366, 369 (2020) ("Due process is satisfied where interested parties are given an opportunity to be heard at a meaningful time and in a meaningful manner." (internal quotation marks omitted)).

Finally, Kelly vaguely contends that the district court "misapplied or misinterpreted attorney/client privilege" by allowing Archon to produce files with redactions, but he fails to offer any further explanation on this point, *see Edwards v. Emperor's Garden Rest.*, 122 Nev. 317, 330

n.38, 130 P.3d 1280, 1288 n.38 (2006) (noting that the appellate courts need not consider claims unsupported by cogent argument), and redacting records with privileged information is permissible. See NRS 49.095 (providing that “[a] client has a privilege to refuse to disclose” material protected by the attorney-client privilege). Accordingly, because Kelly has failed to demonstrate that the district court abused its discretion or otherwise erred in denying his motion for relief from the August 2018 amended order, see *Cook v. Cook*, 112 Nev. 179, 181-82, 912 P.2d 264, 265 (1996) (reviewing a district court’s decision concerning NRCP 60(b) relief for an abuse of discretion), we

ORDER the judgment of the district court AFFIRMED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

¹Insofar as the parties raise 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: Chief Judge, Eighth Judicial District Court
Eighth Judicial District Court, Dept. 24
James Kelly
Lewis Brisbois Bisgaard & Smith, LLP/Las Vegas
Eighth District Court Clerk