IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JASON POWELL,
Appellant,
vs.
TICO CONSTRUCTION COMPANY, INC., A NEVADA CORPORATION,
Respondent.

No. 85008-COA

ORDER AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

Jason Powell appeals from post-judgment district court orders denying in part a claim of exemption from a judgment of execution and denying a motion to satisfy a judgment. Second Judicial District Court, Washoe County; Lynne K. Jones, Chief Judge.

In 2008, Tico Construction Company (Tico) filed a complaint against Jason Powell and Genseven Development and Construction, LLC (Genseven).[1] Tico is a general contractor and employed Powell as a senior project manager. Tico alleged that Powell, while employed by Tico, began working to obtain a construction contract on his own behalf to the detriment of Tico. In January 2008, Powell resigned from Tico and became a full partner at Genseven, a general contractor and competitor of Tico's that had formed in December 2007. In April 2008, a few months after Powell joined Genseven, Genseven obtained a construction contract from an organization, which Tico alleges that Powell, while working at Tico, had been instructed to negotiate a contract with on behalf of Tico. In its complaint, Tico raised the following causes of action against Genseven and Powell: injunctive relief, unfair competition, intentional interference with prospective economic

[1]We recount the facts only as necessary for our disposition.

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advantage, misappropriation of trade secrets, and unjust enrichment. Tico also raised the following causes of action against Powell, individually: breach of contract, contractual breach of implied covenant of good faith and fair dealing, tortious breach of the covenant of good faith and fair dealing, and breach of fiduciary duty.

Genseven filed an answer and counterclaim, and Powell filed a motion to compel arbitration and stay judicial proceedings. The district court granted Powell's motion to compel arbitration and stayed the proceedings against Powell in front of the court until after the completion of the arbitration but allowed the proceedings to continue against Genseven. In August 2009, Tico filed a motion requesting that a default judgment be entered against Genseven and stated that Genseven had failed to produce documents required under NRCP 16.1 and had failed to respond to requests for production. Genseven opposed this motion, but in September 2009, the district court entered a default judgment against Genseven for $215,149.86, the amount of damages incurred by Tico as a result of losing the construction contract at issue to Genseven, and also ordered Genseven to pay Tico $70,000 in attorney fees and $5,907.82 in costs. In April 2010, Tico filed a satisfaction of the judgment against Genseven. The satisfaction of judgment states that the judgment was satisfied upon Tico receiving $75,000 "and other valuable consideration" from Genseven. There was no itemization of the $75,000 paid, nor did the satisfaction of judgment address Tico's right to collect the remainder of the judgment against Genseven from Powell.

In June 2010, after Genseven satisfied Tico's judgment against it, an arbitration between Tico and Powell was conducted. However, Powell did not attend the arbitration despite having notice of the proceedings. The arbitrator awarded Tico $215,149.86 in damages and reasonable attorney fees and costs against Powell. Without objection from Powell, the district

court entered a judgment based on the arbitrator's award against Powell and in favor of Tico in July 2010, including that interest would accrue at the rate of 5.25%. We note that the judgments Tico obtained against both Genseven and Powell, exclusive of attorney fees and costs and interest, were for the same amount of damages sought by Tico for the loss of its construction contract—$215,149.86.

Because Powell had not satisfied the judgment against him, in July 2016, Tico filed an affidavit of renewal of the judgment against Powell in the amount of $283,243.11, the principal judgment, plus attorney fees and costs and the accrued interest. In August 2020, several years after the judgment against Powell was renewed, the district court entered a writ of execution against Powell's assets. Powell claimed several exemptions from execution on the judgment to which Tico objected. A hearing was held on Powell's objections and at the hearing Powell argued that $2,376.01 located in his bank account was exempt. Specifically, he argued that 75% of the $2,376.01 ($1,782) was exempt under NRS 21.090(1)(g) (allowing 75% of wages to be exempt), and the remaining 25% ($594.02) was exempt under NRS 21.090(1)(z) (allowing up to $10,000 to be exempt under the so-called wildcard exemption).[2] During the hearing, the district court orally found that $594.02 was exempt under the wildcard exemption, and further exempted $1,782 as wages, for a total of $2,376.02 in exemptions.

In April 2022, Tico filed another writ of execution against Powell in an effort to collect the outstanding judgment against him. Powell then filed another request for exemption in May 2022, which Tico opposed and requested a hearing. Without holding a hearing, the district court found that Powell could only exempt up to $7,623.99 using his wildcard exemption

[2]We note that 25% of $2,376.01 is actually $594.00.

because he had previously exempted $2,376.01. We note that, by finding that Powell had already exempted $2,376.01 in 2016 under the wildcard exemption, the district court essentially treated all of the money located in his bank account as having been exempted under the wildcard exemption. Therefore, the district court concluded that Powell was only entitled to protect $7,623.99 under a wildcard exemption in 2022. We note that this contradicts the district court's previous oral ruling in 2016 where the court determined that only $594.02 (sic) was exempt under the wildcard exemption.

In May 2022, Powell filed a motion requesting an order that the clerk enter a full satisfaction of the judgment against him since the Genseven judgment had been satisfied, and the same amount of damages based on the same underlying facts formed the basis for both judgments awarded. Powell contended that both judgments were predicated on the exact same injury—the loss of Tico's construction contract in the amount of $215,149.86. Tico filed an opposition and the district court denied Powell's motion because nothing in the plain language of the satisfaction of judgment could be construed as relieving Powell of satisfying the judgment against him, as the judgment against Powell was a separate judgment. The district court also rejected Powell's theory that he was entitled to satisfaction of the judgment under a joint tortfeasor theory as the court pointed out that the judgment against Powell was based on contract law.

Powell now appeals from the district court's order addressing the denial of his motion for the satisfaction of the judgment against him, and the order addressing his 2022 exemption request without conducting a hearing. Powell argues that the district court erred by not entering an order fully satisfying the judgment against him for three reasons: (1) the double recovery doctrine prevents Tico from recovering a judgment against both

Powell and Genseven for claims arising from the same event, (2) the Uniform Joint Obligations Act prevents Tico from recovering from both Powell and Genseven, and (3) the Uniform Contribution Among Tortfeasors Act prevents Tico from recovering from both Powell and Genseven. Powell also argues that the district court erred by finding that the wildcard exemption does not renew each time an attempt is made to collect a judgment when previously protected funds have been spent. Powell further argues that Washoe District Court Rule (WDCR) 12 and WDCR 16 violate the separation of powers doctrine since WDCR 16 does not require a hearing to be held when an objection to an exemption has been filed and NRS 21.112 does. Finally, Powell summarily argues that his due process rights were violated when a hearing was not held under WDCR 12 after Tico objected to his 2022 exemption claim based on the wildcard exemption. Tico appears to concede that a hearing would have been appropriate because it lodged an objection to Powell's requested wildcard exemption and requested a hearing. Thus, on appeal, it appears that both parties desire the district court to conduct a hearing on Powell's claimed wildcard exemption.

The district court did not err when it denied Powell's motion to satisfy the judgment

At the outset, Tico argues that this court does not have subject matter jurisdiction to grant Powell relief from judgment and relies on NRS 38.241 (providing the limited reasons why a court may vacate an arbitration award and providing that a motion under NRS 38.241 must be made within 90 days after the party has received notice of the award).[3] Powell responds that the judgment from the arbitrator is void, and that no authority can retroactively establish authority to allow a court to enter a void judgment.

[3]We note that Powell never made a motion under NRS 38.241.

Since Powell never made a motion under NRS 38.241, Tico's argument does not assist in resolving the issues on appeal.

Powell also argues that he properly sought relief under NRCP 60(b)(4) and (5) based on his argument that the judgment against him was void or had been satisfied. On appeal, Tico responds that Powell's NRCP 60(b) motion was untimely. Powell replies that his motion was timely.[4]

Double Recovery Doctrine

Powell argues that the double recovery doctrine prevents Tico from recovering any amount of the judgment against him. On appeal, Powell raises a different argument than he raised before the district court. Now, Powell broadly argues that the double recovery doctrine prevents Tico from recovering double damages, while below Powell argued that the double recovery doctrine meant the Powell judgment was void ab initio. Because the district court has not yet addressed the double recovery doctrine in relation to Tico's efforts to collect its judgment against Powell, we need not

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[4]The district court did not address the timeliness issue and we decline to do so in the first instance on appeal. *See 9352 Cranesbill Tr. v. Wells Fargo Bank, N.A.*, 136 Nev. 76, 82, 459 P.3d 227, 232 (2020) (declining to address an issue that the district court did not resolve); *see also Zugel v. Miller*, 99 Nev. 100, 101, 659 P.2d 296, 297 (1983) ("This court is not a fact-finding tribunal."). Nevertheless, we note that NRCP 60(c)(1) requires that NRCP 60(b) motions "be made within a reasonable time." While there is no specific amount of time that has been accepted as by definition "unreasonable" to seek relief under NRCP 60(b)(4) and (5), the supreme court has held that it is unreasonable to wait two years to seek relief especially when attempts were made to collect on the judgment during that time. *Deal v. Baines*, 110 Nev. 509, 512, 874 P.2d 775, 778 (1994). Tico obtained the judgment in 2010, renewed it in 2016, and served the renewal on Powell two years before Powell filed his motion. In this case, nearly 12 years had passed, and therefore, under applicable Nevada jurisprudence, the motion to declare a judgment void under NRCP 60(b) may have been untimely filed. *See In re Harrison Living Tr.*, 121 Nev. 217, 222, 112 P.3d 1058, 1061 (2005).

address it in the first instance. Additionally, Powell may not raise his new double-recovery-doctrine argument for the first time on appeal. *See Diamond Enters., Inc. v. Lau*, 113 Nev. 1376, 1378, 951 P.2d 73, 74 (1997) (stating "that arguments raised for the first time on appeal need not be considered").

Even if we address the merits of Powell's new argument, that double recovery prevents Tico from recovering any amount of the judgment against him, Powell's argument fails. The double recovery doctrine provides that a plaintiff may recover only once for a single injury even if it asserts multiple legal theories. *Elyousef v. O'Reilly & Ferrario, LLC*, 126 Nev. 441, 444, 245 P.3d 547, 549 (2010) (concluding that the double recovery doctrine prohibits a plaintiff from recovering another judgment from a different defendant after one defendant has already satisfied the judgment). And we review de novo to determine if the double recovery doctrine precludes a claim. *Id.* at 443, 245 P.3d at 548. Unlike in *Elyousef*, Tico did not recover its total damages against Genseven, nor has Tico been able to collect its total damages awarded against Powell. While both of the Tico judgments awarded contract damages of $215,149.86,[5] Tico only recovered $75,000 from Genseven, which Tico contends was reimbursement for attorney fees and costs (although the satisfaction judgment does not specify this). In *Elyousef*, the supreme court indicated that part of the reason Elyousef could not recover from the law firm was because he received reimbursement for damages in a settlement agreement that covered part of the damages he was seeking, and his controlling interest in an LLC was restored, which resulted in a total valuation beyond what he was seeking in damages. *Id.* Therefore, Elyousef had been made whole. In this case, Tico has not yet been made

[5]We again note that in 2016 the Powell judgment had an updated value of $283,243.11, which we construe as having accrued interest at an annual rate of 5.25% on the principal amount, which is ongoing.

whole, so Genseven's satisfaction of judgment does not preclude Tico from collecting on Powell's judgment under *Elyousef* based on the doctrine of double recovery.

To that end, we also point out that the judgment entered against Powell as the result of an arbitration award occurred *after* Genseven satisfied the judgment against it. Thus, logically, when Genseven satisfied the judgment against it, it could not have satisfied a judgment against Powell that had yet to exist. Further, Powell had the opportunity to raise the satisfaction of judgment issue at the time the district court entered a separate judgment against him and failed to do so. Nevertheless, *if* the $75,000 Tico received from Genseven was not for attorney fees and costs, as argued by Tico, then the double recovery doctrine likely requires an offset of this amount from any judgment Powell owes to Tico. *See W. Techs., Inc. v. All-Am. Golf Ctr., Inc.*, 122 Nev. 869, 874, 139 P.3d 858, 861 (2006) (stating that an offset of the total damages by the amount already received from the plaintiff may be awarded to prevent a plaintiff from receiving a double recovery). Thus, if the issue arises during potential future proceedings, the district court should consider whether an offset is appropriate.

Uniform Joint Obligations Act

We briefly address Powell's argument that he is entitled to full relief from the judgment against him under the Uniform Joint Obligations Act. Powell essentially argues that because he and Genseven were joint obligors, Genseven's satisfaction of judgment effectively eliminates Tico's judgment against Powell. The Uniform Joint Obligations Act provides that when a claim against an obligor is satisfied without expressly reserving rights against a coobligor, the judgment against the coobligor is satisfied *but* only as to the amount paid, if the obligee knew that the "obligor was bound to such coobligor to pay." NRS 101.060(1). The act applies to both tort and

contract actions. *W. Techs.*, 122 Nev. at 873, 139 P.3d at 861. Here, assuming, without deciding, that Genseven and Powell were coobligors under the statute, Powell's argument that Genseven's satisfaction of judgment completely satisfies the judgment against him fails because, under the Uniform Joint Obligations Act, at best, Powell may be entitled to an offset of the $75,000 paid by Genseven. However, Powell has never requested an offset in district court, and we decline to impose one in the first instance on appeal.

Uniform Contribution Among Tortfeasors Act

Powell also argues that Tico is prevented from recovering any amount of the judgment against him under the Uniform Contribution Among Tortfeasors Act (UCATA) which provides that "[t]he recovery of a judgment for an injury . . . against one tortfeasor does not itself discharge the other tortfeasors from liability for the injury . . . unless the judgment is satisfied. The satisfaction of the judgment does not impair any right of contribution." NRS 17.235. Assuming, without deciding, that Genseven and Powell are joint tortfeasors, Powell may only be entitled to an offset of the $75,000 paid by Genseven.

While this court has not addressed this exact factual situation before, the United States Court of Appeals for the Fourth Circuit addressed similar factual circumstances to the facts presently before this court. *See Sun Chems. Trading Corp. v. SGS Control Servs., Inc.*, 159 Fed. Appx. 459 (4th Cir. 2005).[6] Sun and its co-plaintiff, collectively referred to as Sun, sued

[6]We note that this is an unpublished disposition and that the Fourth Circuit rules provide that citing an unpublished disposition prior to January 2007 is disfavored but may be done if there is no published opinion that provides "precedential value in relation to a material issue in a case." 4th Cir. R. 32.1.

three parties in claim arising from contract and tort law after Sun exported grease contaminated with lard to Turkey despite being assured by the parties that the grease did not contain lard. *Id.* at 460. One party settled with Sun, one compelled arbitration, and one party, SGS, proceeded with the litigation. *Id.* The arbitration panel found in favor of Sun on most of the causes of action and awarded Sun a portion of the damages Sun asked for. *Id.* at 461. Following arbitration, SGS moved to have the complaint against it dismissed under the theory that Sun had recovered for the injuries it suffered under the "one-satisfaction" doctrine because the arbitration award had awarded Sun damages. *Id.* The court concluded that North Carolina law "precludes a plaintiff from recovering more than one-satisfaction for the same injury, caused by different parties." *Id.* at 462.

However, the court went on to conclude that a party should not collect double or overcompensation for an injury and that "an amount paid by anybody, whether they be joint tort-feasors or otherwise, for and on account of any injury or damage, should be held for a credit on the total recovery in any action for the same injury or damage." *Id.* (citing *Holland v. S. Pac. Utils. Co.*, 180 S.E. 592, 593-94 (N.C. 1935)). The court also noted that a plaintiff is entitled to full recovery for its damages but not a double recovery for the same loss or injury. *Id.* (citing *Chemimetal Processing, Inc. v. Schrimsher*, 535 S.E.2d 594 (N.C. App. 2000)).[7] Therefore, even under a liberal application of *Sun*, Powell would only potentially be entitled to a $75,000 offset and not a full satisfaction of judgment. But here, again, Powell has never requested an offset in the amount of $75,000 and we decline to address his entitlement to such an offset in the first instance on appeal.

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[7]We note that *Sun Chemical Trading Corp.* does not specifically cite to the UCATA in the disposition.

The wildcard exemption does not renew once protected funds have been spent

On appeal, Powell also argues that the district court erred by finding that Powell only had $7,623.99 of his wildcard exemption available to use because Powell had previously exempted $2,376.01 under the wildcard exemption. Tico responds that the wildcard exemption does not renew each time a creditor tries to execute a judgment and that a debtor is only entitled to exempt a total of $10,000 under the wildcard exemption.

NRS 21.090(1)(z), known as the wildcard exemption, provides that up to $10,000 of a debtor's assets may be exempt from execution of a judgment. A debtor may withdraw a claim of exemption and allow the property to be released to the creditor to satisfy a judgment. NRS 21.112(8)(b). "[I]ssues of statutory interpretation, such as the interpretation of the wildcard exemption," are reviewed de novo. *Platte River Ins. Co. v. Jackson*, 137 Nev. 773, 774, 500 P.3d 127, 1259 (2021). The purpose of allowing exemptions of debtor property is to allow the debtor to have the ability to gain a livelihood while injuring the creditor as little as possible. *Id.*

Powell did not attempt to withdraw his wildcard exemption that the district court apparently applied to the $2,376.01.[8] Instead, Powell argued below that he is allowed to exempt $10,000 from Tico's present attempt to collect the judgment because he has spent the funds he previously exempted.

Exemption statutes are liberally and beneficially construed in favor of the debtor. *In re Christensen*, 122 Nev. 1309, 1314, 149 P.3d 40, 43

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[8]We note that the district court had previously orally found that only $594.02 was protected under the wildcard exemption and that $1,782 were exempt wages. In the order under appeal denying Powell's exemption the district court found that Powell had previously exempted $2,376.01 under the wildcard exemption. This apparent discrepancy needs to be resolved at a hearing since it is prejudicial to Powell. *Cf.* NRCP 61.

(2006). But as little injury as possible should be done to the creditor. *Platte River*, 137 Nev. at 774, 500 P.3d at 1259. We will not look beyond a statute's plain language if the meaning is clear. *In re Fox*, 129 Nev. 377, 381, 302 P.3d 1137, 1140 (2013). NRS 21.090(1)(z) allows a debtor to exempt personal property not otherwise exempt, but the value of the property may not "exceed $10,000 in total value." Therefore, we conclude that the statute's plain language does not support the proposition that a new $10,000 exemption may be claimed each time a party tries to collect the judgment.[9] But we agree that up to $10,000 can be exempted under the wildcard exemption, and that the exemption continues to apply until the $10,000 limit is reached.

The district court erred by not holding a hearing as required by NRS 21.112(6)

Powell argues that the district court erred by following WDCR 12(5) and WDCR 16 and ruling on Powell's affidavit of claim of exemption without holding a hearing pursuant to NRS 21.112. Powell also argues that WDCR 12(5) and WDCR 16 violate the separation of powers doctrine between the judiciary and legislature. Tico responds that Powell did not request a

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[9]Additionally, we interpret statutes to avoid absurd results. *Platte River*, 137 Nev. at 778, 500 P.3d at 1262. An absurd result is one not intended by the Legislature. *See Young v. Nev. Gaming Control Bd.*, 136 Nev. 584, 588, 473 P.3d 1034, 1037 (2000) (equating an absurd result with one not intended by the Legislature). While the Legislature intended to ensure that debtors were still able to provide for themselves, the Legislature also intended that a party be able to recover a judgment awarded to it. *See Platte River*, 137 Nev. at 774, 500 P.3d at 1259 (stating the purpose of granting exemptions is to ensure the debtor can gain a livelihood while doing as little injury as possible to the creditor). Adopting Powell's argument would potentially allow debtors to endlessly claim the same exemption and upset the balance established by the Legislature by allowing debtors to exempt well over $10,000 over the course of time needed to collect the judgment. This would be an absurd result, thus the limitation recognized herein preserves a creditor's right of recovery.

hearing but acknowledges it requested a hearing along with its objection to Powell's wildcard exemption.

NRS 21.112(3) provides that an objection to a claim of exemption and a notice of a hearing on the objection must be filed within eight judicial days after the claim of exemption is served. Additionally, the district court is required to hold a hearing within seven judicial days after the objection and notice of hearing are filed. NRS 21.112(6).[10] The debtor has the burden of proof at the hearing and must prove they are entitled to the claimed exemption but are not required to first request a hearing. *Id.* This implies that the hearing should be an evidentiary hearing and Powell asserts on appeal that he intended to offer evidence at the hearing regarding the amount of the exemption already used.

WDCR 12(5) states that "[d]ecision[s] shall be rendered without oral argument unless oral argument is ordered by the court." Additionally, claims of exempt property and objections to exemptions are handled the same way other motions are handled "under these rules." WDCR 16. An evidentiary hearing is, by its terms, a hearing where a party may offer evidence, which is not necessarily the same as a hearing to allow oral argument on the existing pleadings. Accordingly, we conclude that the district court erred by not holding an evidentiary hearing as required by NRS

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[10]We note that NRS 21.112(4) states that "[i]f an objection to the claim of exemption and notice for a hearing are not filed within 8 judicial days after the claim of exemption has been served, the property of the judgment debtor must be released by the person who has control or possession over the property." The parties do not argue that this statute applies, nor do they argue what its applications are in the matter presently before the court. Accordingly, we do not address it. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (noting that courts follow the "principle of party presentation" on appeal, which requires litigants to frame the issues).

21.112(6). Therefore, we remand with instructions to conduct an evidentiary hearing on Powell's claimed wildcard exemption.

Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.[11]

_____, C.J.
Gibbons

_____, J.
Bulla

_____, J.
Westbrook

cc: Hon. Lynne K. Jones, Chief Judge
Millward Law, Ltd.
Humphrey O'Rourke Law PLLC
Washoe District Court Clerk

[11]Insofar as the parties have raised 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.