

NC-DSH, INC. v. Garner

125 Nev. Adv. Op. No. 50 (October 29, 2009)

CATEGORY:
SETTLEMENT FRAUD

SYNOPSIS

The issue in this case is whether the lower court properly granted an Order vacating a Stipulated Final Judgment pursuant to N.R.C.P. Rule 60(b) for fraud on the court wherein the plaintiffs' attorney settled the case, forged settlement documents and disappeared with the money without the knowledge or approval of his clients. The court rejected the claim of defendant (Valley Hospital) that it paid \$160,000.00 to buy litigation peace.

FACTS

Attorney Lawrence Davidson, represented the Garners who sued Valley Hospital. Shortly after the settlement, the Garners were informed of the fraud by the federal government and the State Bar of Nevada. The claimants cooperated in the criminal prosecution and disbarment proceedings and received \$6,834.56 from the State Bar's client security fund but waited almost eighteen months before filing their Rule 60(b) motion.

CASE DISCUSSION

The court rejected Valley Hospital's argument that the Davidson fraud was intrinsic to the claim. The court concluded that the issue was not whether the fraud was intrinsic or extrinsic to bring a motion under rule 60, based upon 1981 amendments to both federal and state rules. The six-month limitation on such a motion under Rule 60(b)(3) applies only to fraud of an adverse party. Neither Valley Hospital nor its lawyer had any knowledge of the fraud, but rather it was fraud on the court.

In addition, it is not necessary to proceed only by independent action after the six month time frame. Either motion or independent action is appropriate, and such fraud upon the court justifies setting aside a judgment even years after it is entered. The client grants certain agency to the lawyer, so the lawyer has apparent authority to handle procedural matters but not to settle a case. Restatement 3rd Lawyers, § 27 Comment b (2000). In addition, the lower court's determination, after an evidentiary hearing, that any recovery by the claimants was subject to a credit for the \$160,000.00 paid by Valley Hospital is justified and within its discretionary authority. Further, attempts to resolve the matter with the hospital after becoming aware of the fraud does not constitute ratification of the fraud. Valley Hospital presented no evidence that the eighteen-month delay in presenting the motion caused them to lose specific testimony or evidence nor did Valley Hospital argue that such laches constituted prejudice. Therefore, the lower court's decision was proper.