

**IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

Supreme Court No. 20210084

Williams County

Case No. 53-2012-PR-00480

In the Matter of the Estate of Lyle M. Nelson, Deceased.

First National Bank and Trust Co. of Williston,
as personal representative of the Estate of Lyle
M. Nelson, Lavina Domagala, Trust Officer,

Petitioner and Appellee

v.

Glenn S. Solberg; Sharon Solberg Yoder; Bruce
Solberg; Elaine Solberg Olson; Gloria Dei
Lutheran Church; United Lutheran Church of Zahl;
Dakota Boys Ranch of Minot; Heritage Center of
Williston; Sons of Norway Lodge #086 of Williston;
James Memorial Preservation Society (Old Library);
Veterans and Friends of Old Armory; Douglas
Murawski; James Murawski; Sandra Barnum; Eric
Olson; Samuel Olson; Adam Olson; Tracy Solberg
Willette; Angela Solberg; Russell Solberg

Respondents

Glenn S. Solberg,

Appellant

BRIEF OF APPELLEE

APPEAL OF ORDER DATED JANUARY 3, 2021
AND ORDER DATED MARCH 5, 2021
NORTHWEST JUDICIAL DISTRICT
HONORABLE JOSHUA B. RUSTAD PRESIDING

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BRIEF OF APPELLEE

[¶1] Appellee First National Bank & Trust Co. of Williston, as personal representative of the Estate of Lyle M. Nelson, Lavina Domagala, Trust Officer (hereafter “Bank”) respectfully submits its Brief of Appellee.

[¶2] I. BANK’S STATEMENT OF ISSUES

[¶3] 1. The district court properly denied Glenn Solberg’s Motion for Rule 60(b)(6) Relief dated September 28, 2020 and properly denied and found frivolous Glenn Solberg’s Motion for Rule 60(b)(6) Relief dated January 25, 2021.

[¶4] 2. The claims of Glenn Solberg (hereafter sometimes “Solberg”) are barred by the doctrine of res judicata.

[¶5] II. BANK’S STATEMENT OF THE CASE

[¶6] Solberg appeals from an Order dated January 13, 2021 denying his Motion for Rule 60(b)(6) Relief and an Order dated March 5, 2021 denying his Motion for Rule 60(b)(6) Relief and finding such motion frivolous.

[¶7] III. BANK’S STATEMENT OF THE FACTS

[¶8] This is the third time this case has been on appeal. The first time, the Supreme Court reversed and remanded the case to the District Court stating that the Court was unable to understand the basis for the District Court’s dismissal of Solberg’s claims. Bank Appendix 8-11; see also Estate of Nelson, 2015 ND 122, 863 N.W.2d 521. The second time, the Supreme Court affirmed the District Court’s dismissal of Solberg’s claims for failure to state a claim under N.D.R.Civ.P. 12(b)(6) and further found Solberg’s appeal to be frivolous under N.D.R.App.P. 38. Bank Appendix 12-15; see also Estate of Nelson, 2018 ND 118, 910 N.W.2d 856. Various relevant facts and the background for this case are

discussed at length in Estate of Nelson, 2018 ND 118, ¶¶ 1-5, 910 N.W.2d 856. Bank Appendix 13-14.

[¶9] Solberg filed a Motion for Rule 60(b)(6) Relief on September 28, 2020 (first motion) stating, among other things, the following:

“This motion is directed toward Judge Rustad hereafter, referred to as The Court.

I make a rule Rule 60(b)(6) motion of relief to demand a jury trial to determine whether The Court denied me my civil rights by denying me a jury trial, and suppressing my evidence. If this motion is not granted, this is a complaint against the State of North Dakota; because of The Court that is a state employee.

If Rule 60(b)(6) and a jury trial is not granted, The Court is guilty of civil right violations; which are felonies.”

Bank Appendix 16.

The first motion was denied by the District Court, with the District Court finding that:

“...the claims Glenn Solberg is requesting a jury on have been addressed, not only by this court, but the North Dakota Supreme Court when it affirmed the denial of Claims, ordering that it would be impossible to obtain the relief requested, and that the appeal in fact was frivolous. That 2018 Supreme Court decision is conclusive as to the claims and Res Judicata bars any relitigation of these issues.”

Bank Appendix 35.

The District Court warned Solberg that if he “... is to file any future pleadings found to be frivolous, any potential and available sanctions will be considered, and in fact likely.” Id.

[¶10] Not even two weeks after the above Order and warning, Solberg filed another Motion for Rule 60(b)(6) Relief dated January 25, 2021 (second motion). Bank Appendix 36-38. Solberg stated, among other things, that the “2018 Supreme Court decision is Obsolete, and relying on it denies me my civil rights” and “I demand enforcement of the constitution and request my rule 60 be granted because of harm caused by the violation of

the constitutional right.” Id. at 38.

[¶11] The second motion was denied by the District Court for the same reasons that the first motion was denied. Bank Appendix 39-40. Additionally, the Court found the second motion frivolous under N.D.R.Civ.P. 11 while expressly prohibiting Solberg “... from filing any future pleadings or motions with the Court in this Estate without first obtaining permission from a District Court Judge.” Id. at 40.

[¶12] The Bank resists the appeal by Solberg and asserts that both motions were properly denied and that the District Court properly found the second motion to be frivolous under N.D.R.Civ.P. 11.

[¶13] Solberg appealed both orders. Dist. Ct. Docket #151, #152, and #154.

[¶14] **IV. LAW AND ARGUMENT**

[¶15] **A. Denial of Motions for Rule 60(b)(6) Relief was proper.**

[¶16] Rule 60(b)(6), N.D.R.Civ.P., states as follows:

“(b) **Grounds for Relief from a Final Judgment or Order.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: (6) any other reason that justifies relief.”

The North Dakota Supreme Court will not overturn a district court’s decision on a motion for relief under N.D.R.Civ.P. 60(b) absent an abuse of discretion. North Shore, Inc. v. Wakefield, 542 N.W.2d 725, 727 (N.D. 1996). An abuse of discretion is never assumed and the party seeking relief must affirmatively establish it. Id. A trial court abuses its discretion if it acts in an arbitrary, unreasonable, or unconscionable manner. Id.

[¶17] The district court properly denied Solberg’s first motion and second motion. Solberg provided no reason whatsoever that justified relief under Rule 60(b)(6). Rather, Solberg “... again reiterated that everyone involved did illegal things and that he was

wrongfully denied his right to a jury trial to pursue [his] claims.” Bank Appendix 34. Solberg wants a jury trial so that a jury can hear his claims. However, the claims Solberg wants a jury to hear have already been fully and finally decided and disposed of by the District Court and the Supreme Court. Bank Appendix 12-15; see also Estate of Nelson, 2018 ND 118, ¶11, 910 N.W.2d 856 (“The District Court properly concluded that, with certainty, it would be impossible for Glenn Solberg to obtain the relief he requested from the Lyle Nelson Estate.”).

[¶18] B. Solberg’s claims are barred by Res Judicata.

[¶19] Res Judicata, also known as claim preclusion, prevents relitigation of claims that were raised or could have been raised in prior actions between the same parties. Fettig v. Estate of Fettig, 2019 ND 261, ¶16, 934 N.W.2d 547. Res judicata means that a valid and existing final judgment from a court of competent jurisdiction is conclusive with regard to claims raised, or those that could have been raised, as to the parties in all other actions. Id. Res judicata applies even if subsequent claims are based upon a different legal theory. Id. A judgment on the merits in an earlier action between the same parties constitutes a bar to a subsequent action based upon the same claim(s) or cause(s) of action, not only as to matters in issue, but as to all matters essentially connected with the subject matter of the earlier action. Id. at ¶18. Res judicata promotes efficiency for both the judiciary and litigants by requiring that disputes be finally resolved and ended. Id. at ¶15. The applicability of res judicata is a question of law finally reviewable on appeal. Id.

[¶20] Solberg is asking for a jury trial to hear the claims he previously asserted. Bank Appendix 16-17. Those claims involved (1) 100 mineral acres he believes he is entitled to under Lillian Nelson’s 1985 Will and (2) a right of first refusal as to option property he

believes was given to him in a 1997 codicil to Lillian Nelson's Will. Estate of Nelson, 2018 ND 118, ¶4, 910 N.W.2d 856.

[¶21] These claims have been heard by the district court and they have been considered and disposed of by this court:

“The district court correctly determined that the Lyle Nelson Estate did not hold, and Lyle Nelson never held, an interest in the 100 mineral acres or the option property. Therefore, the court correctly dismissed Glen Solberg's claim because it could conclude with certainty the impossibility of proving a claim upon which relief can be granted. Glen Solberg could not recover property from the Lyle Nelson Estate if Lyle Nelson never held an interest in the property.

...

The district court properly concluded that, with certainty, it would be impossible for Glen Solberg to obtain the relief he requested from the Lyle Nelson Estate.”

Estate of Nelson, 2018 ND 118, ¶¶ 9 and 11, 910 N.W.2d 856.

[¶22] A judgment on the merits in an earlier action between the same parties constitutes a bar to a subsequent action based on the same claims. Fettig v. Estate of Fettig, 2019 ND 261, ¶16, 934 N.W.2d 547. Solberg's claims are barred by res judicata.

[¶23] **C. Solberg's Motion dated January 25, 2021 was frivolous.**

[¶24] The District Court “has the authority to protect the public from those who abuse the process of the courts to harass and annoy others with meritless, frivolous, vexatious repetitive appeals or other proceedings.” Federal Land Bank v. Ziebarth, 520 N.W.2d 51, 58 (N.D. 1994).

[¶25] Solberg's first motion for motion for Rule 60(b)(6) relief was denied on January 13, 2021. Bank Appendix 34-35. In the order denying the motion, the court warned Solberg about making frivolous motions and that sanctions would be likely if he made such motions. Id. at 35. That warning was not heeded when Solberg filed a second motion for Rule 60(b)(6) relief on January 25, 2021. Bank Appendix 36-38. The district court properly

found such second motion to be improperly repetitive and therefore frivolous under N.D.R.Civ.P. 11. Bank Appendix 39-40.

[¶26] D. The Appeal is frivolous.

[¶27] This court, in Estate of Nelson, stated:

Rule 38, N.D.R.App.P., authorizes this Court to award just damages and single or double costs including reasonable attorney's fees if the Court determines an appeal is frivolous. An appeal is frivolous when it is flagrantly groundless. Where the appellant's arguments are both factually and legally so devoid of merit that he should have been aware of the impossibility of success on appeal, an assessment of costs and attorney fees is proper.

Self-represented parties should not be treated differently nor allowed any more or any less consideration than parties represented by counsel.

2018 ND 118, ¶13, 910 N.W.2d 856 (internal citations and quotations omitted) (emphasis mine).

[¶28] As previously stated, this is the third time this matter has come before this court. Solberg's appeal was deemed frivolous when it was before this court the second time. Id. at ¶14. Solberg has presented nothing new this time – the third time. Due to the court's holding in Estate of Nelson, 2018 ND 118, 910 N.W.2d 856, Solberg knows, or should know, that his arguments are meritless and have no chance of success on appeal. Solberg's appeal is frivolous.

[¶29] V. SUMMARY AND CONCLUSION

[¶30] By virtue of this court's holding in Estate of Nelson, 2018 ND 118, 910 N.W.2d 856, Solberg stood to gain nothing by this appeal except to wastefully drain the financial resources of the estate - to the detriment of all estate beneficiaries - and to unnecessarily delay the administration of the estate. This probate case was filed in October 2012, nearly 9 years ago. District Court Docket #1.

[¶31] We respectfully request the Supreme Court AFFIRM the Orders of the district court dated January 13, 2021 and March 5, 2021. We also respectfully request that attorney's fees and costs be assessed against Solberg under N.D.R.Civ.P. 38 for what we submit is a frivolous appeal.

Respectfully submitted this 1st day of July, 2021.

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[¶32]

CERTIFICATE OF COMPLIANCE ON WORD COUNT

[¶33] I hereby certify that this brief complies with N.D.R.App.P. 32(a)(8)(A); the total number of words in the above brief, excluding words in the table of contents, table of authorities, signature block, certificate of word processing program, certificate of service and certificate of compliance on word count does not exceed 8,000.

Dated this 1st day of July, 2021.

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[¶34]

CERTIFICATE OF WORD PROCESSING PROGRAM

[¶35] The word-processing program is Microsoft Office Word 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of July, 2021, I electronically filed with the Clerk of the North Dakota Supreme Court (supclerkofcourt@ndcourts.gov) the BRIEF OF APPELLEE, APPENDIX OF APPELLEE, and AFFIDAVIT and served the same electronically to the following:

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I further certify that on July 1, 2021, I served the BRIEF OF APPELLEE, APPENDIX OF APPELLEE, and AFFIDAVIT by placing true and correct copies of the same in envelopes addressed as follows:

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[¶32] **CERTIFICATE OF COMPLIANCE ON WORD COUNT**

[¶33] I hereby certify that this brief complies with N.D.R.App.P. 32(a)(8)(A); the page count is 10 (from the cover page through the signature line after Summary and Conclusion). The argument on the appropriateness of N.D.R.Civ.P. 54(b) certification is less than one (1) page.

Dated this 1st day of July, 2021.

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