SUMMARY
September 10, 2020

2020C0A135

No. 19CA1903, *Robledo v. CDOC* — Courts and Court Procedure — Inmate Lawsuits — Filing Fees

A division of the court of appeals concludes as a matter of first impression, that section 13-17.5-103(2)(b), C.R.S. 2019 requires simultaneous, not sequential, recoupment of multiple filing fees from Colorado inmates who owe multiple IFP-based state court filing fees.

COLORADO COURT OF APPEALS **2020C0A135**

Court of Appeals No. 19CA1903
Fremont County District Court Nos. 11CV231, 12CV103 & 12CV187
Honorable Stephen A. Groome, Judge

Craig S. Robledo,

Plaintiff-Appellant,

v.

Executive Director of the Colorado Department of Corrections,

Defendant-Appellee.

ORDERS AFFIRMED

Division IV
Opinion by JUDGE HAWTHORNE*
Bernard, C.J., and Davidson*, J., concur

Announced September 10, 2020

Craig S. Robledo, Pro Se

Philip J. Weiser, Attorney General, Rebekah Ryan, Assistant Attorney General, Denver, Colorado, for Defendant-Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2019.

¶ 1 Craig S. Robledo, an inmate in the custody of the Colorado Department of Corrections (DOC), appeals district court orders entered in three separate actions. In each of these cases, the district court denied Robledo's postjudgment motions seeking relief from in forma pauperis (IFP) orders, two of which required him to pay case filing fees. As a matter of first impression, we conclude that section 13-17.5-103(2)(b), C.R.S. 2019, requires simultaneous, not sequential, recoupment of multiple filing fees from Colorado inmates who owe multiple IFP-based state court filing fees. We affirm the district court's orders.

I. Background

¶ 2 In 2011 and 2012, Robledo filed three actions challenging different prison disciplinary convictions he sustained. In one of the cases (number 12CV187), the district court denied Robledo's IFP motion and later dismissed the action after he failed to pay the required filing fee.

¶ 3 In the other two cases (numbers 11CV231 and 12CV103), the district court granted Robledo's IFP motions. And, as required by section 13-17.5-103(2)(b), C.R.S. 2019, the court ordered Robledo to make continuing monthly payments equaling twenty percent of

the preceding month's deposits to his inmate account until the filing fees were paid in full. The court further ordered the DOC to forward the payments from his inmate account to the court clerk as required by section 13-17.5-103(2.7). The court ultimately dismissed these two actions as moot.

¶ 4 More than six years later, Robledo filed identical motions titled "Motion to Consolidate Restitution and Garnishment" in all three actions. In these motions, he described alleged "illegal," "oppressive," and "excessive" garnishment of his inmate account by the DOC to pay for the filing fees in these cases and other charges he had incurred. He argued that the court had jurisdiction to "adjust or revise previous orders regarding payments," and he asked the court to order the DOC to limit future garnishments to a total of twenty percent of all incoming funds.

¶ 5 In all three cases, the district court denied Robledo's motions without comment.

II. Discussion

A. The District Court Properly Denied Robledo's Motions

¶ 6 Robledo contends that the district court erred in denying his motions, arguing that the DOC continues to make "duplicitous extractions" from his account. We perceive no error.

¶ 7 We initially note that Robledo's postjudgment motions didn't contain a recitation of authority explaining the legal basis by which the court could actually modify or vacate the judgments in the three cases. *See Koch v. Dist. Court*, 948 P.2d 4, 7 (Colo. 1997) ("Upon the entry of a valid judgment, the only means by which the district court may alter, amend, or vacate the judgment is by appropriate motion under either C.R.C.P. 59 or C.R.C.P. 60."); *Cortvriendt v. Cortvriendt*, 146 Colo. 387, 390, 361 P.2d 767, 768 (1961) (same). This lack of supporting authority could, by itself, constitute a valid reason for denying Robledo's motions. *See* C.R.C.P. 121, § 1-15(1), (3); *see also In re Marriage of Snyder*, 701 P.2d 153, 155 (Colo. App. 1985).

¶ 8 Based on when Robledo filed the motions, the fact that he filed them in three existing cases, and that the motions sought to vacate or modify the district court's IFP orders that were part of the

underlying judgments, it appears that Robledo may have been seeking relief under C.R.C.P. 60(b). But the rule's only subsections that might arguably apply are C.R.C.P. 60(b)(4) (authorizing relief where it is no longer equitable for the judgment to apply prospectively), or C.R.C.P. 60(b)(5) (any other reason justifying relief from the judgment). We review a district court's denial of motions under C.R.C.P. 60(b)(4) and 60(b)(5) for an abuse of discretion. *See Blesch v. Denver Publ'g Co.*, 62 P.3d 1060, 1063 (Colo. App. 2002).

¶ 9 For several reasons, the court didn't err in denying the motions if they sought relief under these subsections. First, Robledo didn't file the motions within a reasonable time. *See* C.R.C.P. 60(b) (requiring a party, except in a situation not applicable here, to seek relief from a judgment "within a reasonable time"). Indeed, in the motions, Robledo asserted that the DOC's alleged "illegal" garnishments based on the IFP orders began more than six years earlier and "continued for 72 months."

¶ 10 Though Robledo also asserted that the garnishments later became more extreme based on other events, we still perceive no abuse of discretion by the court insofar as it denied the motions as untimely. *See Tripp v. Parga*, 764 P.2d 367, 369 (Colo. App. 1988)

(concluding that motion was untimely where it was based on settlement agreement negotiated four years earlier); *cf. In re Marriage of Seely*, 689 P.2d 1154, 1160 (Colo. App. 1984) (motion filed less than seven months after decree entered was not untimely as a matter of law).

¶ 11 Even if Robledo's motions could be considered timely, they failed to set forth valid substantive grounds for relief.[1] Robledo essentially asked the court to provide him relief from multiple twenty percent deductions from his account arising from different cases. But he cited no Colorado authority to support such relief, and we aren't aware of any. Although he referenced section 5-5-106, C.R.S. 2019, that entire article applies only to "actions or other proceedings to enforce rights arising from *consumer credit transactions*." § 5-5-102, C.R.S. 2019 (emphasis added).

¶ 12 The federal cases Robledo cited in the motions have been abrogated by *Bruce v. Samuels*, 577 U.S. ___, 136 S. Ct. 627 (2016). In *Bruce*, the Supreme Court concluded that 28 U.S.C. § 1915

[1] It is not clear what relief Robledo could have obtained in case number 12CV187 because in that case, the district court apparently never entered an order requiring Robledo to pay the filing fee.

(2018), the federal counterpart to Colorado's inmate IFP statute, "calls for simultaneous, not sequential, recoupment of multiple filing fees." *Id.* at ___, 136 S. Ct. at 631. So, it held that "monthly installment payments . . . are to be assessed on a per-case basis," and that nothing in the statute "supports treating a prisoner's second or third action unlike his first lawsuit." *Id.* at ___, 136 S. Ct. at 629.

¶ 13 28 U.S.C. § 1915(b)(2)'s recoupment provision is similar to Colorado's section 13-17.5-103(2)(b), with both requiring inmates to make ongoing monthly payments to the court. And like its federal counterpart, section 13-17.5-103 is written to seek recoupment on a per case basis, applying to each civil action an inmate files in which IFP status is granted. The statute provides no basis for treating filing fee recoupment any differently if an inmate already has one or more ongoing IFP recoupment obligations from other civil actions. Hence, we see no reason why *Bruce*'s rationale should not apply to Colorado inmates who owe multiple IFP-based state court filing fees. *See Adams v. Corr. Corp. of Am.*, 264 P.3d 640, 643 (Colo. App. 2011) (noting that if federal law is similar to

Colorado's, federal cases may be useful in analyzing the comparable language).

¶ 14 In sum, Robledo's motions provided no grounds for concluding that (1) it was no longer equitable to prospectively apply the underlying judgments, *see* C.R.C.P. 60(b)(4); or (2) any other reason justified relief from the judgments, *see* C.R.C.P. 60(b)(5).

B. Unpreserved Issue

¶ 15 Robledo also contends that in case number 11CV231, the district court erroneously charged him $224 for the filing fee and, instead, should have charged him $182 or $184. He argues that he is entitled to reimbursement of at least $40. We decline to address this issue.

¶ 16 We generally don't address for the first time on appeal issues that haven't been raised in, or decided by, the district court. *See Marcellot v. Exempla, Inc.*, 2012 COA 200, ¶ 11; *see also Witcher v. Canon City*, 716 P.2d 445, 456 (Colo. 1986) ("Unless the trial court has been given an opportunity to correct the alleged error, it will not be considered on review . . . .").

¶ 17 Robledo didn't raise the filing fee overpayment issue in his "Motion to Consolidate Restitution and Garnishment." And though

he later filed a separate motion raising the overpayment issue, on that same day he filed his notice of appeal in this court challenging the court's denial of his "Motion to Consolidate Restitution and Garnishment." So, the district court hasn't addressed the overpayment issue. *See Molitor v. Anderson*, 795 P.2d 266, 269 (Colo. 1990) (noting that absent appellate remand, once appeal has been perfected, trial courts generally may not determine matters affecting substance of judgment). We decline to address the issue for the first time on appeal. *See Marcellot*, ¶ 13.

III. Conclusion

¶ 18 We affirm the district court's orders.

CHIEF JUDGE BERNARD and JUDGE DAVIDSON concur.