STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

NEWPORT, SC. **SUPERIOR COURT**

[FILED: August 25, 2016]

WILLIAM C. MCLAUGHLIN, *Plaintiff,*	:	
V.	:	**C.A. No.: NC-2011-0535**
ZONING BOARD OF REVIEW for the TOWN OF TIVERTON, DAVID COLLINS, SUSAN KRUMHOLTZ, LISE J. GESCHEIDT, Chairperson, JOHN R. JACKSON, Vice-Chairperson, RICHARD D. TAYLOR, in their capacities as members of the Zoning Board of Review of the Town of Tiverton, *Defendants.*	:	

DECISION

STONE, J. This matter came before the Court on May 25, 2016, when Plaintiff William C. McLaughlin (McLaughlin or Plaintiff) filed a Motion to Vacate this Court's April 7, 2014 Order requiring him to remove a garage from his property, and all subsequent orders derived therefrom, pursuant to Super. R. Civ. P. 60(b). Plaintiff argues that the Court was without jurisdiction and, therefore, the judgment was void. For the reasoning set forth herein, the Plaintiff's Motion is denied.

I

Facts and Travel

McLaughlin owned property located at 1640 Fish Road in Tiverton, Rhode Island (the Property). In 2007, he applied for a building permit to build a forty foot by sixty foot garage on

the Property. Subsequently, a permit was issued and the garage was constructed. However—responding to complaints from neighbors—in 2009, the Tiverton Building Official inspected the Property and found that the placement of the garage was in violation of both the front and side yard setback requirements of the Tiverton Zoning Ordinance. See Tiverton Zoning Ordinance, art. V, § 1; art. VI, §§ 1, 3.

Thereafter, in 2010, Plaintiff filed an application for a variance from the Tiverton Zoning Board of Review, listing himself as the applicant and owner of the offending structure. Following some continuances, a hearing on the application took place on September 7, 2011, and the application was denied the following month. Then, on October 26, 2011, Plaintiff appealed the Tiverton Zoning Board of Review's decision to this Court, and roughly two years later, judgment was entered in favor of the Town.[1] McLaughlin filed a notice of appeal that was denied and dismissed by the Supreme Court on January 14, 2014.

On March 11, 2014, the Town filed a motion with the Court requesting that Plaintiff remove the garage within ninety days—having lost his application for relief from the Zoning Ordinance. That motion was granted on April 7, 2014 by Order of this Court. Defendant never appeared at the hearing on the motion, nor did he file an objection. Nonetheless, McLaughlin filed a motion to reconsider the Court's April 7 2014 Order, which was heard by the Court and denied in part on May 9, 2014. When the Court asked McLaughlin what he was seeking, he responded that "I'd be happy if you just started the clock over [on the enforcement and imposition of the fine], ninety days [from] today." Indeed, the Court did modify its April 7, 2014 order to the extent that it allowed McLaughlin ninety days to remove the garage, effective

[1] Collectively, Defendants Tiverton Zoning Board of Review David Collins, Susan Krumholz, Lise J. Gescheidt, Chairperson, John R. Jackson, Vice-Chairperson, and Richard D. Taylor are referred to as the Town or Defendants.

May 9, 2014, and the imposition of a two hundred dollar a day fine for each day the garage remained in place beyond the ninety day period. Thereafter, on July 22, 2014, McLaughlin filed for a writ of certiorari to the Supreme Court which was denied on June 12, 2015.

On November 14, 2014, Defendants filed a motion to hold Plaintiff in contempt of the Court's earlier order for noncompliance. After a continuance, the Town's motion was granted, and, on August 5, 2015, the Court entered an Order fining McLaughlin $69,300 for failure to comply with the Court's earlier Order. On October 16, 2015, Defendants filed a motion with the Court seeking permission to remove the garage as McLaughlin had still failed to do so. On November 18, 2015, this Court entered an Order giving McLaughlin ninety days to remove the structure on his own; following that time, the Town could remove the structure without any further order of the Court. Following the expiration of those final ninety days, the Town did indeed elect to have the structure removed on March 28, 2016.

On May 26, 2016, McLaughlin filed a Motion to Vacate pursuant to Rule 60(b). In essence, McLaughlin argued that this Court never had subject matter jurisdiction to order injunctive relief against him and, as such, the Court must now vacate the previous judgment. The Town objected arguing that the Plaintiff's instant motion is either: 1) barred by res judicata; 2) untimely; or 3) simply without merit. The Court heard argument from both parties on June 6, 2016, and indicated that it would issue a written decision on the matter. Decision is herein rendered in favor of the Town for the reasoning set forth in further detail below.

II

Standard of Review

"[A] motion to vacate a judgment is left to the sound discretion of the [trial] justice." Ryan v. Roman Catholic Bishop of Providence, 941 A.2d 174, 187 (R.I. 2008) (citing Greenfield

Hill Invs., L.L.C. v. Miller, 934 A.2d 223, 224 (R.I. 2007)); see Brown v. Amaral, 460 A.2d 7, 11 (R.I. 1983) (acknowledging Superior Court's "broad power to vacate judgments whenever that action is appropriate to accomplish justice"); see also Chase v. Almardon Mills, Inc., 102 R.I. 579, 580, 232 A.2d 390, 391 (1967) ("courts have an inherent power to . . . vacate their judgments"). However, "judgments, once entered, are not to be disturbed without substantial reason." Chase, 102 R.I. at 581, 232 A.2d at 391–92.

Under Superior Court Rules of Civil Procedure 60(b), "[o]n motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding [if] . . . (4) [t]he judgment is void . . . or (6) [a]ny other reason justifying relief from the operation of the judgment." Rule 60(b)(6) vests this Court with its power to vacate a decision when appropriate to effectuate justice. See Brown, 460 A.2d at 11; Bendix Corp. v. Norberg, 122 R.I. 155, 158, 404 A.2d 505, 506 (1979). However, Rule 60(b)(4) grants the Court the power to vacate a void judgment. Labossiere v. Berstein, 810 A.2d 210, 215 (R.I. 2002). "[R]elief is available under Rule 60(b)(4) only when the court entering the judgment lacked jurisdiction, or the court's actions amounted to 'a plain usurpation of power constituting a violation of due process.'" Id. (quoting Allstate Ins. Co. v. Lombardi, 773 A.2d 864, 869 (R.I. 2001)).

Further, a motion to vacate "shall be made within a reasonable time," and in some instances, must be made within one year of the judgment. Super R. Civ. P. 60(b); see Waldeck v. Domenic Lombardi Realty, Inc., 425 A.2d 81, 83 (R.I. 1981) (stating "one-year period represents the extreme limit of reasonableness" and "undue delay may bar relief, even if the motion is made before the one-year period has expired") (citing Murphy v. Bocchio, 114 R.I. 679, 685, 338 A.2d 519, 523–24 (1975)). A trial justice may vacate a decision, at his or her discretion, to accomplish justice in the eyes of the court. See Super. R. Civ. P. 60(b)(6); Brown,

460 A.2d at 11. But, the burden is on the moving party to show the motion to vacate is justified by legally sufficient grounds. McBurney v. Roszkowski, 875 A.2d 428, 439 (R.I. 2005); Iddings v. McBurney, 657 A.2d 550, 553 (R.I. 1995).

III

Analysis

In his memorandum, McLaughlin advanced several arguments regarding the instant motion.[2] Essentially, he maintains that the Court was without jurisdiction to enter the original order granting injunctive relief following the denial of his zoning appeal, thereby resulting in a void judgment. He goes on to argue that—because the judgment was void—the Court must now vacate its previous order and corresponding judgment. The Town has objected on various grounds, each of which is addressed in seriatim below.

A

Res Judicata

Initially, the Town asks the Court to deny McLaughlin's motion because he already filed a motion to vacate the April 7, 2014 Order. The Town argues that because McLaughlin failed to raise the jurisdictional issue in that motion, he is now precluded from raising it in his second

[2] Plaintiff makes mention of Rule 60(b)(6)—the "other reasons" provision of the Rule—in his memoranda. However, he fails to substantiate an argument as to why that provision should apply. See State v. Florez, 138 A.3d 789, 798 n.10 (R.I. 2016) ("'It is not enough merely to mention a possible argument in the most skeletal way, leaving the court to do counsel's work, create the ossature for the argument, and put flesh on its bones. . . . Judges are not expected to be mind readers. Consequently, a litigant has an obligation to spell out its arguments squarely and distinctly, or else forever hold its peace.'" Id. (quoting U.S. v. Zannino, 895 F.2d 1, 17 (1st Cir. 1990) (internal citation and quotation omitted)). What's more, the Court cannot envision a scenario that would qualify McLaughlin to relief under that provision given the two year delay in the filing of his motion and the fact that 60(b)(6) is intended for use "only in unique circumstances to prevent manifest injustice." Bailey v. Algonquin Gas Transmission Co., 788 A.2d 478, 482–83 (R.I. 2002) (internal citation and quotation marks omitted).

motion to vacate. In response, McLaughlin argues that the previous motion was not a motion to vacate but rather, a motion for reconsideration.

Our Supreme Court has acknowledged that "[a]lthough our rules of procedure do not provide for motions to reconsider, such motions may be treated as motions for relief from judgment under Rule 60(b) of the Superior Court Rules of Civil Procedure." Vaillancourt v. Motta, 986 A.2d 985, 988 (R.I. 2009) (citing Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063, 1068 (R.I. 2008)). Furthermore, "[*r]es judicata*, or claim preclusion, 'bars the relitigation of all issues that were tried or might have been tried in an earlier action.'" Reynolds v. First NLC Fin. Servs., LLC, 81 A.3d 1111, 1115 (R.I. 2014) (quoting Huntley v. State, 63 A.3d 526, 531 (R.I. 2013)). "'[T]he doctrine precludes the relitigation of all the issues that were tried or might have been tried in the original suit,' as long as there is '(1) identity of parties, (2) identity of issues, and (3) finality of judgment in an earlier action.'" Id. (quoting E.W. Audet & Sons, Inc. v. Fireman's Fund Ins. Co. of Newark, New Jersey, 635 A.2d 1181, 1186 (R.I. 1994)); see also Colvin v. Goldenberg, 101 R.I. 338, 341, 223 A.2d 350, 351 (1966) (acknowledging that the doctrine of res judicata applies to successive motions to vacate).

Plaintiff states that both parties agreed that the original motion he filed was a motion for reconsideration and not a motion to vacate. However, this argument is unavailing to McLaughlin. As previously noted, our Supreme Court has stated that a motion to reconsider is synonymous with a motion to vacate under Rule 60(b). Vaillancourt, 986 A.2d at 988 Accordingly, this Court views McLaughlin's previous motion as a motion to vacate—making this a successive motion to vacate pursuant to Rule 60(b). See id. After acknowledging that the Rules do not provide for a motion for reconsideration, the first motion justice ruled that he was "not prepared to change [his] mind, in any event." Hr'g Tr. (Tr.) 3:4–5, May 9, 2014). Clearly,

this was a denial of the motion to vacate. There is no indication that the denial was without prejudice. Rather, the motion justice indicated that Plaintiff should pursue his remedies in the Supreme Court. See id. at 3.

As it relates to res judicata, there is no question that the parties presently before the Court are the same parties that were privy to the original motion to vacate. Furthermore, the issue—whether the Court should vacate the April 7, 2014 Order—is identical to the issue presented in Plaintiff's first motion. Although subject matter jurisdiction was not specifically argued in the first motion, res judicata applies to all issues that were raised and all issues that "might have been tried in an earlier" proceeding. Reynolds, 81 A.3d at 1115 (emphasis supplied). The jurisdictional issue is not a novel one that would only now occur to counsel in this, the eleventh hour. The jurisdiction of this Court, as it relates to zoning enforcement, is the same now as it was when the original motion was denied. As such, that argument is one that could have—and should have—been raised in the first motion, and failure to promptly raise it resulted in Plaintiff waiving that argument. See id.

Finally, the first motion justice's decision was a final judgment and was issued with prejudice. Although the initial motion justice did not explicitly say that the motion was denied, he essentially stated as much by saying that he was "not prepared to change [his] mind." (Tr. 3:4–5). Such language is the functional equivalent of a denial on a motion to "reconsider" or vacate. What's more, it is axiomatic that the denial of a motion to vacate is done with prejudice. See Palumbo v. Yeaw, 636 A.2d 708, 710 (R.I. 1994) (the inclusion of "'with prejudice' is at best surplusage and redundant" in the context of a final action in a case); contra Colvin, 101 R.I. at 341, 223 A.2d at 351 (where the motion justice specifically denied the motion to vacate "without prejudice"). Just as in Palumbo, nothing remained before the Superior Court on the

case, and the motion justice even suggested that Plaintiff seek relief from the Supreme Court—once again bolstering the fact that this was a denial with prejudice. 636 A.2d at 710.

In sum, the Court finds that the instant motion to vacate is barred by the doctrine of res judicata. Any arguments that were available to Plaintiff at the time of the initial motion—like his current argument regarding jurisdiction—should have been made at that time. Parties to an action are entitled to some security in the finality of the judgment, and to allow parties to repeatedly file motions to vacate with different arguments would undermine that security. Therefore, Plaintiff's motion to vacate is denied. The Court briefly goes on to address the remaining arguments.

B

Subject Matter Jurisdiction

As to the merits of Plaintiff's motion, he claims that the Court was without jurisdiction to hear the Town's motion for injunctive relief because the action was merely a zoning appeal which he had himself instituted and the Town made no counterclaims against him. In turn, the Town argues that Plaintiff had notice of the motion for enforcement and that its failure to institute a separate action should not void the judgment as this Court inherently has the power to grant injunctive relief against litigants before it.

While Rule 60(b)(4) allows relief from a final judgment if the judgment is void, a void judgment must be distinguished from one that is legally erroneous. Allstate Ins. Co., 773 A.2d at 869 (a judgment is not void merely because it is erroneous). "A void judgment is one which . . . [is] a complete nullity and without legal effect. In the interest of finality, the concept of void judgments is narrowly construed." Fafel v. DiPaola, 399 F.3d 403, 410 (1st Cir. 2005); see also Allen v. S. Cnty. Hosp., 945 A.2d 289, 293 (R.I. 2008) ("Our Rule 60(b) is nearly identical to

Rule 60(b) of the Federal Rules of Civil Procedure, and, as a result, we find federal cases interpreting this rule to be instructive."). In Rhode Island, as in the federal courts, a judgment is generally void if the court entering the judgment lacked subject matter or personal jurisdiction or where the court's action amounts to a plain usurpation of power constituting a violation of due process. Allstate, 773 A.2d at 869. However, courts have noted that even the "inflexible" jurisdiction requirements faced by a Court may eventually yield to the strong interest of finality. Fafel, 399 F.3d at 410; Hodge v. Hodge, 621 F.2d 590, 593 (3d. Cir. 1980) ("[U]nless more than the private interests of the litigants is at stake, even the issue of subject matter jurisdiction must at some point be laid to rest."). "[I]f the record supports an 'arguable basis' for concluding that subject-matter jurisdiction existed, a final judgment cannot be collaterally attacked as void." Baella-Silva v. Hulsey, 454 F.3d 5, 9–10 (1st Cir. 2006) (citing Fafel, 399 F.3d at 410).

This Court is then left to determine whether there was an arguable basis for jurisdiction when the Court heard the original motion on April 7, 2014. This is not a question that the Court needs to grapple with at length. The Rhode Island Superior Court is vested with the jurisdiction "[t]o compel compliance with the provisions of any zoning ordinance." G.L. 1956 § 45-24-62(2). Therefore, this Court had a basis for establishing subject matter jurisdiction which is merely the ability, or power, for a court to hear a certain type of case. See Trainor v. Grieder, 91 A.3d 360, 362 (R.I. 2014) (As this Court has explained, "[s]ubject matter jurisdiction 'is the very essence of the court's power to hear and decide a case.'" Id. (quoting Long v. Dell, Inc., 984 A.2d 1074, 1079 (R.I. 2009)). As the record supports an arguable basis for this Court having subject matter jurisdiction over the Town's motion, the ensuing April 7, 2014 Order cannot now be collaterally attacked as void. See Baella-Silva, 454 F.3d at 9–10 (citing Fafel, 399 F.3d at 410).

Next, it cannot be said that this Court's "action amount[ed] to a plain usurpation of power constituting a violation of due process." See Allstate, 773 A.2d at 869. Plaintiff received notice that the motion was being heard and he failed to appear. Although McLaughlin argues that he did not receive accurate notice of the hearing, he failed to file any objection with the Court that would have preserved his objection even without his attendance. Not only that, he failed to raise any type of jurisdictional argument in his original motion to vacate, in his appeal, or in his subsequent application for a writ of certiorari. In short, Plaintiff was afforded the full breadth of due process but failed to timely raise this argument until now, and therefore, he was not deprived of any constitutional rights by the Town's actions.

McLaughlin does not attack the merits of the underlying decision but rather, the procedure utilized by the Town. As courts have noted, there is a strong interest in finality of judgments and, where only a litigant's private interests are at stake, "even the issue of subject matter jurisdiction must at some point be laid to rest." Hodge, 621 F.2d at 593; see also Baella-Silva, 454 F.3d at 9–10. Here, that interest in finality outweighs the Plaintiff's private interest, given his repeated failure to raise this argument until now—over two years later. Additionally, it cannot be said that the original judgment was "void" given the narrow definition that courts have applied to that term in the Rule 60 context and the arguable basis for jurisdiction found here. See Fafel, 399 F.3d at 410. Therefore, the Court finds that Plaintiff's motion—even if not barred by res judicata—is without merit.

C

Timeliness

Lastly, the Court briefly pauses to discuss the timeliness of McLaughlin's motion. The Town argues that the present motion is not timely because it was brought two years after the

original order was entered. However, McLaughlin maintains that a motion to vacate a void judgment may be brought at any time because the underlying judgment is a nullity.

Under Rule 60(b), a motion to vacate must be brought within a reasonable time and not more than one year after the judgment when the moving party is claiming either (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence; and (3) fraud. Flynn v. Al-Amir, 811 A.2d 1146, 1150 (R.I. 2002). When the moving party is asserting any of the other grounds for a Rule 60(b) motion to vacate—judgment is void; the judgment has been satisfied, released, or discharged; or any other reason justifying relief from the operation of the judgment—the motion is not subject to the one-year filing deadline. Id. "Accordingly, a Rule 60(b)(4) motion may be brought at any time." In re Quigley, 21 A.3d 393, 398 (R.I. 2011) (citing Flynn, 811 A.2d at 1150 n.3).

As the motion was premised upon a Rule 60(b)(4) theory—that the judgment was void—the Court cannot say that it was untimely. Our Supreme Court has held that a motion brought pursuant to Rule 60(b)(4) entitles the movant to an unqualified right to relief when found to be with merit. See In re Quigley, 21 A.3d at 398; Kildeer Realty v. Brewster Realty Corp., 826 A.2d 961, 965 (R.I. 2003). Although the Court found the instant motion to be without merit, it was still timely pursuant to our Supreme Court's jurisprudence that these types of motions "may be brought at any time." In re Quigley, 21 A.3d at 398.

IV

Conclusion

After due consideration and for all of the foregoing reasons, this Court denies McLaughlin's Motion to Vacate its April 7, 2014 Order. McLaughlin failed to prove that either the judgment was void or that extraordinary circumstances existed to justify vacating the Order in the interest of justice. Prevailing counsel may present an order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

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JUSTICE/MAGISTRATE:	Stone, J.
ATTORNEYS:	
For Plaintiff:	Daniel Calabro, Jr., Esq.; Thomas Connolly, Esq.
For Defendant:	Peter Frederick Skwirz, Esq.; Gina A. DiCenso, Esq.