

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-369

JULY TERM, 2010

Union School District #45	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
Wright & Morrissey, Inc.	}	DOCKET NO. 670-10-12 Wncv

Trial Judge: Helen M. Toor
Geoffrey W. Crawford

In the above-entitled cause, the Clerk will enter:

Defendant Wright & Morrissey, Inc. (Wright) appeals from the superior court's order denying Wright relief from an earlier judgment finding the corporation liable for damages to a sidewalk it constructed for plaintiff Union School District #45 (District). For its part, the District has filed a motion asking that this Court strike Wright's brief and sanction Wright by awarding the District attorney's fees that it incurred in this appeal. We affirm, but deny the motion for sanctions.

This is the third time this case has come before us. The first time we rejected all but one of the arguments in Wright's appeal from a superior court judgment awarding the District roughly \$100,000 based on a project architect's liability determination arising from an alternative-dispute-resolution provision in the parties' construction contract. See Union Sch. Dist. #45 v. Wright & Morrissey, Inc., 2007 VT 129, 183 Vt. 555 (Wright I). One of the arguments we rejected in that appeal was Wright's contention that the superior court lacked subject matter jurisdiction over the controversy. Id. ¶ 8. We affirmed the superior court's judgment in all respects, except that we remanded the matter for the superior court to calculate prejudgment interest due on Wright's counterclaim. On remand, Wright filed a motion to dismiss for lack of subject matter jurisdiction. The trial court denied the motion, and Wright appealed to this Court. In our second decision, this time heard by a three-justice panel, we held that our remand to the superior court for calculation of prejudgment interest on Wright's counterclaim did not "generally reopen the case to reargument or authorize the court to consider issues beyond the scope of our remand." Union Sch. Dist. #45 v. Wright & Morrissey, Inc., No. 2008-289, slip op. at 2 (Vt. March 5, 2009) (unreported mem.) (Wright II). We also stated that the superior court "was plainly correct in ruling that each of [Wright's] claims [on remand] was squarely considered and rejected in Wright I, which established the law of the case." Id.

In May 2009, the District commenced efforts to enforce its judgment. In response to these efforts, notwithstanding the earlier rulings of the superior court and this Court, Wright filed a motion for relief from judgment under V.R.C.P. 60(b) again claiming, among other things, that

the superior court had lacked jurisdiction to adjudicate the controversy between the parties. The superior court denied the motion, stating that Wright was raising the same arguments already litigated extensively, and rejected, by both the trial and appellate courts. The court also ruled that any claims of misrepresentations of the underlying facts were precluded under principles of *res judicata*. In a later decision, the superior court also granted the District's motion to impose sanctions on Wright for raising claims that "were previously resolved through the course of repeated hearings and appeals."

On appeal, Wright argues that (1) the superior court lacked jurisdiction over the District's original complaint; (2) the District waived the right to bring the original complaint; (3) even if the superior court had subject matter jurisdiction over the original complaint, it exceeded its authority in ruling that the architect's decision established Wright's liability; and (4) in any event, in reviewing the decision of the architect, the court erred by not employing the review standards applicable to a court entertaining an application to confirm an arbitrator's award. Notwithstanding the previous rulings precluding Wright from raising jurisdictional objections to the District's original complaint, Wright once again raises essentially the same issues already adjudicated against it. Moreover, Wright does so (1) without asserting that this is an appeal from a denial of a motion to reopen a previous judgment under Rule 60(b), an especially limited avenue of appeal; (2) without setting forth the standard for such review; and (3) without addressing the superior court's ruling that its arguments were foreclosed by principles of *res judicata*. Under these circumstances, where Wright acknowledges neither the posture of the appeal nor the reasoning of the decision from which it is appealing, we affirm the superior court's decision as consistent with our decisions in Wright I and Wright II.

Although Wright appears to raise ever-evolving variations of his "subject matter jurisdiction" claims, even claims of that nature cannot be the basis for voiding a prior judgment under Rule 60(b) when "a party had a prior opportunity to contest on those grounds but failed to do so." Donley v. Donley, 165 Vt. 619, 620 (1996) (mem.) (citing authorities). Here, Wright's challenges and due process claims have been rejected on multiple occasions. To the extent its arguments are nuanced to present an arguably different slant in this latest appeal, the same should and could have been raised earlier, and so are equally barred.

At oral argument, Wright insisted that this Court has never previously ruled on an argument that it has raised from the beginning of this dispute and in each of its prior appeals: that the superior court was not authorized to enforce an out-of-court decision (the architect's decision) by asserting general jurisdiction over a civil cause of action sounding in contract. According to Wright, this Court held only that the parties' entry into an arbitration agreement did not deprive the superior court of jurisdiction over such an original civil action. Assuming that this argument was raised from the beginning, this Court definitively and finally disposed of all issues in the case, except for a narrow prejudgment-interest issue, in the first appeal. To the extent Wright believed that we did not address all of the issues it raised in its original appeal, it was obligated to make such a contention in a motion for reargument. In fact, Wright filed motions for reargument in each of the prior appeals, but, in both cases, the motions were denied as untimely filed. In short, this Court has fully and finally disposed of all of Wright's subject-matter-jurisdiction arguments, including the arguments raised by Wright's counsel at oral argument in this case.

The District has moved to strike appellant's brief and award it attorney's fees because of Wright's duplicative and meritless arguments adjudicated on multiple occasions by both the superior court and this Court. At this juncture, we deny the District's motion, but plainly state that all jurisdictional issues raised by Wright have been fully and finally decided.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Brian L. Burgess, Associate Justice