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Briefly: 'Extraordinary circumstances' for relief from judgment

By: Eric J. Magnuson and Brandon Carmack November 1, 2022

You brought your lawsuit in the trial court. You thought your client had a good argument, but it could turn either way depending on how the court ruled on the law. Unfortunately, the trial court agreed with the other side, and ruled against you. Undeterred, you did what every good lawyer would do under the circumstances — after discussing it with your client, you filed an appeal. After all, the case was decided on a point of law, and you know that a *de novo* standard of review will greet you in the appellate court. It's as close to a do-over as you can possibly get. After briefing and argument, you get the decision of the appellate court. It was close, but no cigar – the district court's decision is affirmed.

Your client wants to know her options. Can you ask the appellate court to reconsider its decision? Can you go to a higher court? Once again, you give careful and thoughtful advice to your client – only this time it's a harder message. Most appellate courts, if they even entertain rehearing petitions, rarely grant them. Depending on the level of appellate court you just visited, you may be trying to get discretionary review by a state Supreme Court or the Supreme Court of the United States. The prospects there are, to put it mildly, extremely limited. Based on your thoughtful counsel, the client decides the case is over.

Then, a seeming miracle — a new case comes down that cuts the heart out of the decision of the lower court in your case and vindicates your arguments completely. Or the legislature passes a "clarifying" amendment explaining that the statute in question has always meant exactly what you claim it meant. Now the biggest question — what do you do next?

This scenario is not a law school brainteaser. It happens more often than you'd think. It is often in the context of federal courts trying to make *Erie* guesses on state law without clear guidance from the appellate courts of the state in question. It also happens when, despite your thoughtful analysis, another panel of the same court that just said no to you reaches the opposite conclusion in a different case. And it is also true that sometimes the legislature sees how courts are construing a statute and acts to correct what it thinks is a flawed analysis. Sometimes there is little that can be done. But not always.

First, remember the Federal Rules of Civil Procedure generally authorize courts to relieve parties from otherwise binding judgments in "extraordinary circumstances." *See* Fed. R. Civ. P. 60(b). The Minnesota state court counterpart is virtually identical. The rule itself provides a non-exhaustive list of example circumstances (e.g. fraud, mistake, newly discovered evidence, etc.). Notably, however, the rule does *not* list "subsequent statutory amendments" or "inapposite judicial rulings" as an express basis for relief. Instead, the rule simply permits relief for "any other reason that justifies relief." Helpful, but not really.

When in doubt, it's not a bad idea to see if the Supreme Court has addressed the topic. Here, it has. In *Gonzalez v. Crosby*, 545 U.S. 524 (2005), the Court held that a Rule 60(b)(6) motion was the proper means of bringing a challenge based on an intervening change in the law. An inmate's petition for federal habeas relief was denied by the federal district and appellate courts as untimely. *Id.* at 527. Seven months later, the Supreme Court issued a decision that revised the rule relied on by the court of appeals; had that rule applied to the inmate's case, his habeas petition would have been timely. The petitioner filed a Rule 60(b)(6) motion seeking to reopen his case, and, although the court did not ultimately grant the motion, it held that the petitioner's motion under Rule 60(b)(6) was the proper means of bringing such a challenge. *Id.* at 533.

Courts have followed the approach of assessing these issues under Rule 60(b)(6) outside of the habeas corpus context as well. See *Henson v. Fidelity National Financial, Inc.*, 943 F.3d 434, 455 (Ninth Cir. 2019) (applying multi-factor test from *Phelps* in non-habeas context and finding that facts "heavily tipp[ed] the scale in favor of granting Rule 60(b)(6) relief."); *Pierce v. Cook & Co.*, 518 F.2d 720, 722 (10th Cir. 1975) (granting party's rule 60(b)(6) motion and vacating a federal district court's judgment where the federal trial and appellate courts' earlier rulings relied on a state court decision that was overruled by the Oklahoma Supreme Court three years later).

But it is a tough path, even for the government. In *Riley v. Filson*, 933 F.3d 1068, 1071 (9th Cir. 2019), after federal habeas relief was granted, the state filed its own motion for relief from judgment, asserting that intervening decisions of the Nevada Supreme Court had undermined the federal habeas court's interpretation of *mens rea*. The district court denied the motion, and the state appealed. The 9th Circuit held that the intervening decisions from the Nevada Supreme Court were not a change in law.

Closer to home, two Eighth Circuit rulings provide some additional insight. In *Carlson v. Hyundai Motor Co.*, plaintiff brought product liability claims against Hyundai, alleging Hyundai's defective seat belt and door frame caused her to suffer ejection-enhanced injuries. The district court concluded that Minnesota's "seat belt gag rule," codified in Minn. Stat. § 169.685, subd. 4, barred plaintiff's claims. That decision was affirmed on appeal to the 8th Circuit. *See Carlson v. Hyundai Motor Co.*, 164 F.3d 1160 (8th Cir.1999). The appellate court's mandate issued on March 15, 1999, and was filed in the district court as its final judgment on March 17, 1999. One month later, Minnesota's legislature amended Section 169.685 to "clarify" that it does not prevent a plaintiff from bringing a claim.

Plaintiff filed a motion under Fed. R. Civ. P. 60(b) to vacate the court's prior judgment based on this clarification. But the district court granted no relief.

The court noted the general rule that "'a change in the law that would have governed the dispute, had the dispute not already been decided, is not by itself an extraordinary circumstance' warranting Rule 60(b) relief from a final judgment." The court further noted that the amended statute only applied to claims "pending on or commenced on or after May 18, 1999."

Relying on this general rule and the language of the amendment, the court concluded that plaintiff's claims were not "pending" because they were not alive before any tribunal for resolution – the case was over. The 8th Circuit affirmed. "In these circumstances, the district court did not abuse its discretion when it denied Carlson's motion for Rule 60(b) relief." *Carlson v. Hyundai Motor Co.*, 222 F.3d 1044, 1045 (8th Cir. 2000).

The Eighth Circuit also addressed subsequent contrary rulings in *Kansas Public Employees Retirement System ("KPERS") v. Reimer & Koger Associates, Inc.*, 194 F. 3d 922 (8th Cir. 1999). The district court granted summary judgment in favor of all defendants (except one), finding plaintiff's claim were barred by Kansas's statute of limitations. A short time later, the Kansas Supreme Court heard plaintiff's case against the remaining defendant, interpreting the statute of limitations in direct contravention of the federal court's interpretation. After plaintiff's success with the remaining defendant, plaintiff attempted to reopen its federal case against the other defendants.

The 8th Circuit did not find the Kansas Supreme Court's subsequent ruling to constitute an "exceptional circumstance" under Fed. R. Civ. P. 60(b). The court took a policy position that "[s]ociety's powerful countervailing interest in the finality of judgments" could not be overcome by the mere fact that a subsequent state ruling contradicted the federal court's ruling.

The first question you should ask is whether there really was a change in the law. In *Riley*, the Ninth Circuit concluded that the subsequent decisions by the Nevada Supreme Court did not actually change the *mens rea* element required for first-degree murder. *Id.*

Not only must there be a change in the law, but it must be a change that justifies relief. "[A] district court should weigh whether the specific nature of the change in the law in the case before it makes granting relief more or less justified under all of the circumstances, and should support its conclusion with a reasoned explanation provided in the equitable considerations raised by the case at bench." *Henson*, 943 F.3d at 446-47. In *Henson*, plaintiffs voluntarily dismissed their case with prejudice so they could appeal both the district court's denial of class certification and a partial grant of a motion to dismiss. Plaintiffs' appeals were stayed pending the Supreme Court's decision in *Microsoft Corp. v. Baker*, which reviewed the Ninth Circuit's rule that a stipulated voluntary dismissal of a class action was a sufficiently adverse final order to support an appeal. The Court reversed the Ninth Circuit. 137 S.Ct. 1702 (2017).

On remand, the *Henson* plaintiffs argued that Microsoft's intervening change in the law entitled them to relief from judgment under *Phelps v. Alameida*, 569 F.3d 1120 (9th Cir. 2009) – that is, relief from their own stipulation. Id. at 443. The district court disagreed but was overruled on appeal.

The Ninth Circuit Court of Appeals noted that while *Phelps* is the controlling analysis for Rule (60)(b) claims for relief, it was not meant to "'impose a rigid or exhaustive checklist,' because 'Rule 60(b)(6) is a grand reservoir of equitable power,' and it affords courts the discretion and power 'to vacate judgments whenever such action is appropriate to accomplish justice.'" *Henson v. Fid. Nat'l Fin., Inc.*, 943 F.3d 434, 445 (9th Cir. 2019) (quoting *Phelps*, 569 F.3d at 1135). And justice was served (at least from the plaintiffs' perspective. "Weighing all the *Phelps* factors, correctly analyzed, it is clear that all the relevant circumstances in this case heavily tip the scale in favor of granting Rule 60(b)(6) relief. . . . Together, the circumstances of this case are therefore sufficiently 'extraordinary' that granting relief from judgment here 'is appropriate to accomplish justice.'" *Id*. at 455.

So, what is the moral of these stories? First, if you know or suspect that there might be a change in the law, keep your case alive as long as you can. Even after an appellate decision has been issued, it is possible to make a motion to hold the mandate so that the appellate court retains jurisdiction over the case. Once the mandate is issued, the trial court generally acts with dispatch to give effect to the mandate, enter final judgment, and close the case. Once that is done, the game is largely over.

Second, remember courts are afforded significant discretion over granting Rule 60(b) relief. Seeking Rule 60(b) relief outside a habeas corpus context is highly fact specific. While *Phelps* and its progeny guide the court's discretion, they do not obligate the court to look within such narrow parameters. Ask whether a denial of Rule 60(b) relief is *unjust*. Identify the facts on which you rely to reach that conclusion and map those facts onto *Henson* and *Phelps*, and Eighth Circuit precedent.

It is entirely possible that a subsequent change in law (whether statute or case law) can provide your client relief form a prior judgment. But while the courts are empowered to provide that relief, they do so sparingly.

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