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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TOMAS S. TAORMINA,
Plaintiff,

v.
STOREY COUNTY,
Defendant.

3:09-CV-00021-LRH-VPC

ORDER

Before the court is Plaintiff Tomas S. Taormina’s (“Plaintiff”) Motion to Vacate, Alter or Amend the Judgement (#21¹). Defendant Storey County (“Defendant”) has filed an opposition (#22) to which Plaintiff replied (#23).

This is a declaratory judgment action arising out of Plaintiff’s attempts to build radio antenna towers on his property in the Virginia City Highlands in Storey County, Nevada. Plaintiff is an amateur radio operator licensed by the Federal Communications Commission (“FCC”). After Storey County issued a stop work order on the construction of two of Plaintiff’s radio antenna towers, Plaintiff initiated this action.

On June 17, 2010, the court granted summary judgement (#19) for Storey County finding the regulations at issue to be facially consistent with federal law. Fearing that this suit will bar

¹Refers to the court’s docket entry number.

1 Plaintiff from challenging Storey County's zoning regulations as applied to him in the future,
2 pursuant to Federal Rules of Civil Procedure 59(e) and 60(b), Plaintiff filed the motion to vacate,
3 alter, or amend judgment now before the court.

4 Where a ruling has resulted in a final judgement or order, a motion for reconsideration may
5 be construed as a motion to alter or amend judgement pursuant to Rule 59(e) or as a motion for
6 relief from judgement pursuant to Rule 60(b). *School Dist. No. 1J v. AS&C, Inc.*, 5 F.3d 1255,
7 1263 (9th Cir. 1993). A motion under Rule 59(e) should not be granted unless the district court is
8 presented with newly discovered evidence, committed clear error, or if there is an intervening
9 change in the controlling law. *Herbst v. Cook*, 260 F.3d 1039, 1044 (9th Cir. 2001). Rule 60(b)
10 provides that a district court may relieve a party from final judgement or order upon a showing of
11 mistake, newly discovered evidence, fraud or excusable neglect. *Bateman v. U.S. Postal Serv.*, 231
12 F.3d 1220, 1223 (9th Cir. 2000). Motions to reconsider are generally left to the discretion of the
13 trial court. *Herbst*, 260 F.3d at 1044.

14 Plaintiff's primary concern in filing this motion lies with the potential for the present
15 judgment to preclude his "as applied" claim. Res judicata or claim preclusion bars all grounds for
16 recovery that could have been asserted in a prior suit between the same parties on the same cause
17 of action. *Gregory v. Widnall*, 153 F.3d 1071, 1074 (9th Cir. 1998) (internal quotation marks and
18 citation omitted).

19 To date, the court has not considered the merits of Plaintiff's contention that, as applied to
20 him, the Storey County regulations violate certain FCC regulations. In its order addressing the
21 motion for summary judgment, the court noted that because Plaintiff has not applied for a special
22 use permit that would enable him to construct the radio antennas, Storey County has not had the
23 opportunity to apply its zoning regulations to Plaintiff's amateur communications. As a result, the
24 court could not determine whether Storey County has reasonably accommodated Plaintiff and
25 dismissed Plaintiff's "as applied" claim for lack of ripeness. *See Lujan v. Nat'l Wildlife Fed'n*, 497
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1 U.S. 871, 891 (1990) (“[A] regulation is not ordinarily considered the type of agency action 'ripe'
2 for judicial review . . . until the scope of the controversy has been reduced to more manageable
3 proportions, and its factual components fleshed out, by some concrete action applying the
4 regulation to the claimant's situation in a fashion that harms or threatens to harm him”); *see also*
5 *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1138 (9th Cir. 2000) (noting that the
6 ripeness doctrine is designed to “prevent the courts, through avoidance of premature adjudication,
7 from entangling themselves in abstract disagreements”); *S. Pac. Transp. Co. v. Los Angeles*, 922
8 F.2d 498, 502 (9th Cir. 1990) (holding that if a claim is unripe, federal courts lack subject matter
9 jurisdiction and must dismiss the claim).

10 Because Plaintiff’s “as applied” claim was not ripe for review at the time of the judgement,
11 its dismissal will not bar Plaintiff from challenging the Storey County regulations as applied to him
12 in the future. *See Katt v. Dykhouse*, 983 F.2d 690, 694 (6th Cir. 1992) (holding that the district
13 court erred in dismissing plaintiff’s as applied claim on res judicata grounds where the claim was
14 not ripe at the time of a prior proceeding).

15 IT IS THEREFORE ORDERED that Plaintiff’s Motion to Vacate, Alter or Amend the
16 Judgement (#21) is DENIED.

17 IT IS SO ORDERED.

18 DATED this 9th day of September, 2010.



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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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