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Summary of Biscay v. MGM Resorts Int'l., 131 Nev. Adv. Op. 46 (July 2, 2015)

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CIVIL PROCEDURE: DISCRETION TO DISMISS

Summary

The Court concluded dismissal is not proper under NRS 18.130(4)² when a non-resident plaintiff files security with the court clerk for the defendant's costs when the required security is filed any time prior to the action being dismissed.

Background

Sandra Biscay filed suit against MGM Resorts International ("MGM") following a slip-and-fall incident. MGM filed a demand for security of costs pursuant to NRS 18.130(1). Biscay filed the required security over six months later. MGM moved for dismissal nine days after Biscay filed the security bond. The district court dismissed the case, ruling that dismissal was appropriate since Biscay had not filed her security within 30 days of receiving notice it was required. Biscay argues on appeal that dismissal is improper when the security is filed before the case is dismissed.

Discussion

A dismissal under NRS 18.130 is reviewed for abuse of discretion.³ Issues of statutory interpretation are reviewed de novo.⁴

NRS 18.130 is designed to protect defendants from the dangers of litigating against non-resident plaintiffs. NRS 18.130(4) states that a judge "may" order dismissal if 30 days have passed without a non-resident plaintiff filing a required security. The Court concluded that a plain reading of the statute means once the 30 days have passed, the case *may* be dismissed, but a plaintiff is free to file the required security any time prior to dismissal. While deciding whether or not to dismiss a case pursuant to NRS 18.130(4) is within the discretion of the district court, it is an abuse of discretion to dismiss a case if the plaintiff has filed the required security.

Conclusion

The district court abused its discretion in granting MGM's motion to dismiss. The Court reversed the district court's dismissal order and remanded the case for further proceedings.

¹ By Patrick Phippen.

² Non-resident plaintiffs must file security for costs that may be awarded against them upon written demand by the defendant. *See* NEV. REV. STAT. § 18.130(1). The case may be dismissed if such security is not filed within 30 days. *See* NEV. REV. STAT. § 18.130(4).

³ *Brion v. Union Plaza Corp.*, 104 Nev. 553, 555 (1988).

⁴ *MGM Mirage v. Nev. Ins. Guar. Ass'n*, 125 Nev. 223, 226 (2009). Courts should "give effect to the statute's plain meaning . . . when the language of a statute is plain and unambiguous, such that it is capable of only one meaning, [courts] should not construe that statute otherwise." *Id.* at 228–29.