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Summary of Humphries v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 85

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Humphries v. Eighth Jud. Dist. Ct., 129 Nev. Adv. Op. 85 (Nov. 7, 2013)[1]

CIVIL PROCEDURAL: "NECESSARY PARTIES" UNDER NRCP 19

Summary

The Court determined two issues: (1) whether relief through a writ of mandamus was appropriate for the petitioners, Humphries and Rocha, and (2) whether Ferrell, a non-party cotortfeasor, was a necessary party under NRCP 19(a).

Disposition

Cotortfeasors are not "necessary parties" under NRCP 19(a). Thus, a plaintiff need not join potential non-party cotortfeasors where he can receive complete relief against the defendants he chooses to sue.

Factual and Procedural History

In 2010, an altercation took place between Erik Ferrell and the petitioners Carey Humphries and Lorenza Rocha. The event occurred on real-party-in-interest New York-New York's casino floor. Humphries and Rocha filed a complaint against New York-New York alleging assorted negligence claims based on its duty to protect, but did not include any claims against Ferrell. As an affirmative defense, New York-New York asserted that Humphries and Rocha were comparatively negligent.

Following the complaint, the Court issued an opinion in *Café Moda, L.L.C. v. Palma*, which held that in comparative negligence cases involving multiple tortfeasors, an intentional tortfeasor's liability is joint and several, whereas a negligent cotortfeasor's liability is several.[2] In light of this holding, New York-New York moved to compel the petitioners to join Ferrell, asserting that Ferrell was a necessary party under NRCP 19(a). The district court granted the motion and compelled the petitioners to join Ferrell. Humphries and Rocha petitioned this Court for a writ of mandamus, seeking to vacate the order compelling joinder.

Discussion

Writ of mandamus

The Nevada Constitution gives the Court jurisdiction to issue writs of mandamus.[3] However, if there is a "plain, speedy, and adequate remedy in the ordinary course of law," the Court will not issue a writ.[4] Ultimately it is within the Court's discretion to determine whether to consider such petitions.[5]

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[1] By Sean Daly.
[2] 128 Nev. ___, 272 P.3d 137 (2012).
[3] NEV. CONST. art. VI, § 4.
[4] NEV. REV. STAT. § 34.170 (2013).
[5] Smith v. Eighth Jud. Dist. Ct., 107 Nev. 674, 677, 818 P.2d 849, 851 (1991).

The Court concluded that Humphries and Rocha did not have a "plain, speedy, and adequate remedy in the ordinary course of the law" because the case was in the early stages of litigation, and the district court's order threatened to dismiss their action if they did not join Ferrell and assert causes of action against him. The Court also saw the petition as an opportunity to clarify its holding in *Café Moda*, and thus considered the petition.

The district court erred in compelling Humphries and Rocha to join Ferrell as a necessary party

To determine whether the district court erred in compelling Humphries and Rocha to join Ferrell, the Court first determined that under the traditional doctrine of joint and several liability. cotortfeasors are not necessary parties. NRCP 19(a) states that a person must be joined in an action if that person is necessary to the action. A person is necessary to the action if (1) the court cannot accord complete relief among existing parties without him, or (2) he has an interest in the action that will be impaired by his absence.[6] Accordingly, federal courts have recognized that cotortfeasors are not necessary parties under FRCP 19(a) (the federal counterpart to the NRCP) when the defendant is jointly and severally liable, or severally liable,[7] because complete relief can be afforded to a plaintiff, even without the presence of other potential cotortfeasors.

The Legislature, however, supplanted the common-law rules of joint and several liability by enacting NRS 41.141, which allows a plaintiff to recover damages as long as his comparative negligence does not exceed that of the defendant (or the combined negligence of multiple defendants where the plaintiff has sued multiple defendants).[8] The statute alters joint and several liability by allowing for the apportionment of fault, and providing for several liability amongst negligent defendants. NRS 41.141 has been construed as abolishing joint and several liability between an intentional tortfeasor and a negligent tortfeasor where the two causes of action arise from the same injury.[9] Furthermore, the statute only permits limiting a defendant's liability where recovery is allowed against more than one defendant.[10] Thus, "a negligent defendant should be held severally liable only for the percentage of fault apportioned to it where a plaintiff has sued multiple tortfeasors and recovery is allowed against more than one defendant.

As Ferrell is not a party to this case, NRS 41.141 does not permit the jury to apportion fault between Ferrell and New York-New York, and it does not permit the district court to apply several liability to New York-New York. As a result, "the statute does not change the result reached under the traditional joint and several liability analysis: the defendant is still jointly and severally liable for the entire judgment against it."[11]

In light of this understanding of NRS 41.141, the Court declined to alter the traditional analysis of whether cotortfeasors are necessary parties under NRCP 19(a) when the defendant is jointly and severally liable. The existence of other non-party cotortfeasors is irrelevant to the question of whether a plaintiff may be afforded complete relief against the persons who are

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[6] NEV. R. CIV. P. 19(a)(1)-(2).
[7] *See, e.g.*, Temple v. Synthes Corp., 498 U.S. 5, 7 (1990); Gen. Refractories Co. v. First State Ins. Co., 500 F.3d 306, 313–19 (3d Cir. 2007); UTI Corp. v. Fireman's Fund Ins. Co., 896 F. Supp. 389, 392–96 (D.N.J. 1995).
[8] NEV. REV. STAT. § 41.141(1), (2)(a) (2013).
[9] Café Moda, LLC v. Palma, 128 Nev. ___, ___, 272 P.3d 137, 141 (2012).
[10] Warmbrodt v. Blanchard, 100 Nev. 703, 708, 692 P.2d 1282, 1286 (1984).
[11] The Court recognized that the Legislature enacted several liability for negligent defendants to avoid the "deep pock doctrine," but also noted that the Legislature did not indicate that several liability should be applied to cases involving a single defendant.

already parties. "Accordingly, a cotortfeasor is not a party necessary to a plaintiff's action against another cotortfeasor."

The Court also recognized that policy considerations militated against a per se rule compelling a plaintiff to join cotortfeasors as necessary parties. Specifically, if a plaintiff were unable to join a tortfeasor because the tortfeasor is unknown, immune from liability, or outside the court's jurisdiction, dismissal for failing to join the tortfeasor would prevent the plaintiff from recovering any damages.

Finally, the Court emphasized that New-York-New York has the ability to implead Ferrell on a contribution theory under NRCP 14(a), even if the petitioners chose not to bring any cause of action against Ferrell in their original claim.[12] This affords New York-New York some relief without requiring joinder of a tortfeasor as a necessary party under NRCP 19(a).

Conclusion

Ferrell, as a non-party cotortfeasor, is not a necessary party under NRCP 19(a), and the district court erred in compelling the petitioners to join Ferrell. Therefore, the Court granted the petition and instructed the district court to vacate its order compelling Ferrell's joinder and to enter an order denying New York-New York's motion.

[12] Pack v. La Tourette, 128 Nev. __, __, 277 P.3d 1246, 1247 (2012).