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Summary of Choy v. Ameristar Casinos, Inc., 127 Nev. Adv. Op. 78

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CIVIL PROCEDURE—SUMMARY JUDGMENT

Summary

A petition for an en banc reconsideration of a panel opinion affirming the district court's summary judgment in a tort action.

Disposition/Outcome

Nev. R. Civ. P. 56(f) requires a party requesting a continuance for a summary judgment motion to provide an affidavit explaining why the party lacks sufficient facts to justify an opposition. This decision supersedes the Court's previous ruling in *Halimi v. Blacketor*.

Factual and Procedural History

Appellant Paul Choy filed tort claims against Ameristar Casinos, Inc. Ameristar filed a motion for summary judgment. Choy filed an opposition and requested the motion be continued for further discovery. The lower court denied Choy's request because he did not substantially comply with Nev. R. Civ. P. 56(f)'s requirement that a party seeking a continuance in a summary judgment opposition provide an affidavit explaining why the party cannot present "facts essential to justify the party's opposition"³ and granted Ameristar's motion for summary judgment.

On appeal, Choy argued that the district court erred in denying his request under Nev. R. Civ. P. 56(f) and granting Ameristar's motion for summary judgment. A panel of the Supreme Court upheld the lower court's decision. Choy then filed a timely petition for rehearing, which the Court denied. Choy then filed a timely petition for en banc reconsideration.

Discussion

Justice Douglas wrote the unanimous opinion of the Court sitting en banc. En banc reconsideration is appropriate when preserving precedential uniformity or in matters involving substantial precedential, constitutional, or public policy value.⁴

Choy contended that the Court's decision in *Halimi v. Blacketor* did not require him to comply with Nev. R. Civ. P. 56(f). The Court disagreed. It stated that to the extent that *Halimi* is inconsistent with Nev. R. Civ. P. 56(f) and the Court's holding in *Choy*, the Court disapproved of the holding in *Halimi*. Therefore, Choy should have substantially complied with Nev. R. Civ. P. 56(f) and provided the required affidavit. Choy thus failed to meet his burden that en banc reconsideration was warranted.

¹ By Rami Hernandez.

³ *Choy v. Ameristar Casinos*, 127 Nev. ___, ___, 265 P.3d 698, 700 (2011).

⁴ Nev. R. App. P. 40A(a).

Conclusion

The Court denied the petition for en banc reconsideration.

The Court disagreed with Appellant's argument that the Court's 1989 decision in *Halimi v. Blacketor*⁵ did not require him to comply with the affidavit requirement of Nev. R. Civ. P. 56(f). As Appellant failed to prove that an en banc review was warranted, his petition was denied.

⁵ 105 Nev. 105, 106, 770 P.3d 531, 531 (1989).