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Summary of Lund v. Dist. Ct., 127 Nev. Adv. Op. No. 28

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CIVIL PROCEDURE

I. SUMMARY

A petition for a writ of mandamus directing the district court to vacate its order dismissing petitioner's counterclaims that added new parties to the action and to reinstate those counterclaims.

II. DISPOSITION/OUTCOME

The Supreme Court of Nevada held that the district court did not adequately analyze the admission of the counterclaims under NRCP 13(h). The Supreme Court vacated the district court's order dismissing the counterclaims, but did not reinstate the counterclaims, leaving that to the district court's discretion in light of this opinion.

III. FACTUAL AND PROCEDURAL HISTORY

In September 2010, petitioner Benjamin Lund and Brian M. Walsh got into a fight during a charity golf event in Las Vegas. Walsh filed a tort action against Lund and others for injuries sustained during the fight. Lund filed a counterclaim against Walsh, also adding counterclaims against four other individuals who were present at the time of the fight.

Three of the new parties petitioned the district court to dismiss the counterclaims, arguing that new parties may not be added to a lawsuit in that manner. Lund's opposition to the motion argued that NRCP 13(h) expressly permits new parties to be added through counterclaim. The district court granted the motion dismissing the counterclaims, after which Lund filed an emergency petition to the Nevada Supreme Court for a writ of mandamus.

IV. DISCUSSION

Justice Gibbons wrote for the unanimous three judge panel. Under NRCP 13(h), a defendant may file a counterclaim that adds new parties if the new parties meet the joinder requirements under NRCP 19 or 20. Courts typically apply this rule liberally "in an effort to avoid multiplicity of litigation, minimize the circuitry of actions, and foster judicial economy."² As a matter of persuasive authority, federal courts have interpreted NRCP 13's federal counterpart to require at least one of the parties in the counterclaim to be an original party to the action.³

¹ By Ryan Johnson

² CHARLES ALAN WRIGHT, ARTHUR R. MILLER, & MARY KAY KANE, FEDERAL PRACTICE AND PROCEDURE § 1434 (2010); *See also*, NEV. R. CIV. P. 1.

³ *See, e.g.* AllTech Comc'ns, LLC v. Brothers, 601 F. Supp. 2d 1255, 1260 (N.D. Okla. 2008).

NRCP 19 requires joining of all parties necessary for an action's just adjudication.⁴ NRCP 20 permits joinder if the right to relief asserted is "in respect of or arising out of the same transaction, occurrence, or series of transaction or occurrences and if any question of law or fact common to all these parties will arise in the action."

In the case at hand, the original plaintiff was named as a counter-defendant in each of the counterclaims. Therefore, if the counterclaim defendants can be joined under NRCP 19 or 20, the petitioner's counterclaims will be admitted under NRCP 13(h). The Court noted that next logical step in the analysis would be to consider the joinder of the counterclaim defendants under NRCP 19 or 20. However, the parties did not provide briefing on this point; therefore, the Court declined to reach the issue and left this determination to the district court.

The Supreme Court found that the district court incorrectly examined the admission of the counterclaims under NRCP 14 (regarding third-party indemnity), when it should have examined the issue under NRCP 13(h). Because of this error, the Supreme Court found that the district court manifestly abused its power and vacated the district court's order dismissing the counterclaims. The Court felt that a writ was appropriate in this situation because writs may compel a court to exercise discretion that it has when it failed to do so.⁵ In this case, the district court failed to analyze the counterclaims under NRCP 13(h) because it claimed it had no authority to allow the parties under that rule.

As an important footnote, the Court stated that this filing as an emergency petition was not warranted because the petitioner had other means of recourse. It warned that such abuses in the future could lead to sanctions against the moving party.

V. CONCLUSION

Under NRCP 13(h), new parties may be added through a counterclaim if they could be joined under NRCP 19 or 20, and as long as one of the counterclaim defendants was a party in the original action.

⁴ NEV. R. CIV. P. 19(a)(1)-(2).

⁵ See *Willmes v. Reno Mun. Ct.*, 118 Nev. 831, 835, 59 P.3d 1197, 1200 (2002).