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Fanders v. Riverside Resort & Casino, 126 Nev. Adv. Op. No. 50 (December 30, 2010)¹
TORTS- Workers' Compensation

Summary

An appeal of an Eighth Judicial District Court's summary judgment in a tort action against a former employer and co-employees based on the exclusivity provisions of the workers' compensation statutes that arose around the time of employment termination.

Disposition/Outcome

The Court reversed the district court's summary judgment and remanded the case "because there [were] genuine issues of material fact as to whether [the] injuries arose out of and in the course of... employment, and thus, whether they were covered by workers' compensation."

Factual and Procedural History

Riverside Resort and Casino employed Juana Fanders as a guest room attendant. When Riverside called Fanders to the human resource office and confronted her with a coworker's accusation of inappropriate language, Fanders became angry and quit her job. Riverside instructed Fanders to sign termination papers and security guards told her they would escort her off the premises. However, the human resources director had instructed the security guards to "86" Fanders from the property, which in part meant taking Fanders' picture. To avoid having her picture taken without knowing why, Fanders climbed under a table. Fanders alleged a guard grabbed "her by her hair, pulled her out from under the table, and called her a derogatory name. The parties agree[d] that Fanders was then handcuffed and placed in a holding cell...."

Fanders filed a civil complaint including several tortious claims² against Riverside and the security guards. The defendants moved for summary judgment, arguing that Fanders' injuries arose out of and in the course of her employment at Riverside, and therefore the workers' compensation statutes, found in the Nevada Industrial Insurance Act (NIIA), were Fanders' exclusive remedy. The district court granted summary judgment; Fanders appealed.

Discussion

The Nevada Supreme Court, which reviews summary judgment de novo, noted that a district court should only grant summary judgment if the movant is entitled to judgment as a matter of law and if there are no genuine issues of material facts.³

Because the NIIA is the exclusive remedy for injuries that arise out of and in the course of employment,⁴ the threshold question in this case was whether Fanders' injuries arose out of

¹ Summarized by Bracken Longhurst

² Fanders raised claims of assault and battery, vicarious liability, wrongful imprisonment, negligence, and punitive damages.

³ *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).

and in the course of her employment. Injuries occur within the course of employment when the nature of the work or workplace causes or contributes to the risk of the injury. The NIIA generally does not apply to injuries that occur after the employment relationship ends, however, some courts recognize exceptions to this rule. The court agreed with the reasoning of the Texas appellate court decision *Sanders v. Texas Employers Insurance Ass'n*,⁵ and held that “when an injury is the result of an inherent hazard of the employment or occurs in the course of conducting the termination, workers’ compensation may apply to injuries sustained after the employment relationship is terminated.”

In this case, the record left several factual issues unresolved. Was the employment relationship severed?⁶ Did Fanders know about the 86 policy? What was the 86 policy regarding employees? Was Fanders at increased risk of being subjected to the 86 procedure due to employment, or does the public at large face the same risk? Was the 86 procedure incidental to termination? The determination of these questions were material in deciding if Fanders’ injuries arose out of and in the course of her employment, and therefore summary judgment was not appropriate.

On remand, the district court must determine if Fanders’ injuries arose out of and in the course of employment. If Fanders’ injuries did not arise out of and in the course of employment, the district court must consider the merits of Fanders’ claims. However, if the injuries did arise out of and in the course of employment, the NIIA is likely Fanders’ exclusive remedy, with a few possible exceptions. The court must determine if Fanders’ claims meet any exceptions and therefore fall outside of the NIIA based on applicable Nevada law. The Court has recognized an exception to the NIIA exclusivity provision when an employer “deliberately and specifically intended to injure [the employee].”⁷ Furthermore, consistent with the court’s decision in *Wood*,⁸ the court held “that when a plaintiff states a viable intentional tort claim against a co-employee, that claim is not barred by the NIIA’s exclusivity provisions.”

Conclusion

The NIIA exclusivity provision does not bar tort claims against employers when an employer “deliberately and specifically intended to injure [the employee];” nor does the NIIA bar intentional torts claims against co-employees.

⁴ NEV. REV. STAT. § 616C.150(1) (2007).

⁵ 775 S.W.2d 762 (Tex. App. 1989).

⁶ Fanders claimed she signed the termination papers and Riverside neither conceded nor denied it. No papers were included in the record.

⁷ *Conway v. Circus Circus Casinos, Inc.*, 116 Nev. 870, 875, 8 P.3d 836, 840 (2000)