

8-8-2017

## Gardner v. Henderson Water Park, L.L.C., 133 Nev. Ad. Op. 54 (Aug. 3, 2017)

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*Nevada Law Journal*

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### Recommended Citation

Cardenas, Scott, "Gardner v. Henderson Water Park, L.L.C., 133 Nev. Ad. Op. 54 (Aug. 3, 2017)" (2017). *Nevada Supreme Court Summaries*. 1074.

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## BUSINESS ORGANIZATIONS: MEMBER LIABILITY

### **Summary**

Under NRS 86.371 and NRS 86.381, an LLC member is not responsible for the LLC's liabilities solely because it is a member.

### **Background**

Appellants Peter and Christian Gardner brought an action against Henderson Water Park, LLC after their son, L.G., nearly drowned and suffered serious injuries at the Cowabunga Bay Water Park. Henderson Water Park, LLC does business as Cowabunga Bay Water Park (the "Water Park"). Appellants also named the Water Park's two managing members, West Coast Water Parks, LLC, and Double Ott Water Holdings, LLC (the "member-LLCs"), as defendants. Appellants alleged, inter alia, that the Water Park and member-LLC's negligence contributed to L.G.'s injuries because the Water Park inadequately staffed lifeguards. The member-LLC's moved for summary judgment, which the district court granted. Accordingly, the district court dismissed the member-LLC's as improper parties. Thereafter, Appellants appealed.

### **Discussion**

Appellants challenged the district's court grant of summary judgment arguing that it erred when it concluded NRS 86.371 and NRS 86.381 protect the member-LLCs from suit because Appellants sought a direct claim against the member-LLCs for their own negligence in operating the Water Park. The Court disagreed.

First, the Court noted that LLC members enjoy the benefit of limited liability, which means that a member cannot be held personally responsible for the LLC's liabilities simply because it is a member. In considering a member's liability to third parties, the Court pointed to the plain language of the controlling statutes in this case—NRS 86.371 and NRS 86.381. Under these two statutes, the court held that a member is not personally liable in a negligence-based tort action against the LLC solely because it is a member.

Next, the Court stated that NRS 86.371 and NRS 86.381 do not protect members from liability for personal negligence; however, Appellants failed to allege that the member-LLCs were personally negligent. Appellants failed to allege any member-LLC conduct that is distinct from the Water Park's conduct, and how any such conduct contributed to L.G.'s injuries. The only duty to L.G. Appellants allege solely arose based on the member-LLC's roles as members.

### **Conclusion**

Since NRS 86.371 provides that member-LLCs cannot be liable solely because they are managing members, and NRS 86.381 provides that the member-LLCs are improper parties in this action, the district court did not err in dismissing the member-LLCs as improper defendants.

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